



Trade Agreements as a Venue for Migration Governance?

Potential and Challenges for the European Union

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Union

Sandra Lavenex

Tamirace Fakhoury

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Foreword

Migration and trade appear, at a first sight, as two different and unrelated policy fields. However, in the past decades, trade policy instruments around the world have increasingly included migration policy provisions. The EU is no exception to this trend. This Delmi report takes a closer look at the nexus between migration and trade policies in EU's external relations by analysing the inclusion of migration policy provisions in EU's trade policy instruments in parallel with EU's evolving migration policy. The report also turns to the design and implementation of so-called 'compacts' that have been concluded with Jordan and Lebanon. The analysis shows the potential that trade policy instruments bear when formulating more comprehensive and coherent migration policies as long as the needs of both parties are addressed equitably and when contextual factors are taken into consideration.

The report is written by Sandra Lavenex, Professor of European and International Politics, University of Geneva and Tamirace Fakhoury, Associate Professor of Political Science and Global Refugee and Migration Studies, Aalborg University in Copenhagen and Scientific Advisor to the Kuwait Chair (2020-2022) at Sciences Po, Paris.

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The authors are fully responsible for the report's contents, including its conclusions and policy recommendations.

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Joakim Palme
Chair, Delmi

Mattias Wahlstedt
Director, Delmi

Summary

This report provides the first comprehensive and longitudinal analysis of the nexus between migration and trade policies in EU external relations. First, the report retraces the inclusion of migration policy provisions in EU trade policy instruments from the 1960s onwards and analyses the contents and rationale of these provisions against the backdrop of the EU's evolving migration policy. Second, the report focuses on the design and implementation of the most recent instruments combining EU trade and migration policy: the so-called 'compacts' concluded with Jordan and Lebanon, two key regional host states that have together received two million refugees in the context of widespread displacement from Syria. The report pursues four inter-connected objectives: 1) identifying the rationale guiding the inclusion of migration policy objectives in EU trade policy instruments and assessing to what extent this policy nexus is the outcome of a comprehensive, coordinated EU migration policy, 2) examining the effectiveness of the trade-migration policy nexus in practice, 3) identifying the factors under which this nexus contributes to a comprehensive and effective EU migration policy, and (4) delineating the contextual conditions under which this nexus is synchronised with the goal of rights-based humanitarianism in migration governance.

By analysing the EU preferential trade agreements concluded at the multilateral and bilateral levels and zooming in on the so-called 'compacts' that seek to grant trade concessions and deploy "positive incentives" in exchange for cooperation on the challenge of forced migration, the report makes three key arguments. *First*, the linkage between EU migration policies and trade policy instruments is more the outcome of ad hoc reactions to external influences than the product of a comprehensive, coordinated, and strategic migration policy plan. Today, trade policy instruments address aspects related to migrants' rights, the facilitation of economic mobility, the fight against irregular migration (including readmission), as well as the hosting and protection of refugee populations. Still, these different elements are not linked in a comprehensive approach; they are inadequately integrated into the EU's migration policy and would clearly benefit from greater coordination. Consequently, in the light of contrasting and overlapping political priorities, the trade-migration policy nexus does not exploit its full potential

and fails to contribute in an effective manner to the objectives of well-managed immigration and refugee protection. *Second*, our analysis of policy implementation in the case of Jordan and Lebanon shows that EU external policies towards third countries fall short of paying due consideration to the varying geopolitical, economic, and social factors moulding the EU's policy templates, and affecting their effectiveness on the ground. *Third*, the trade-migration policy nexus has an uneasy relationship with rights-based humanitarianism and is to be read within the EU's longstanding policy repertoire of externalising migration management. The report concludes that the trade-migration policy nexus does provide hitherto understudied avenues for stronger international cooperation on migration, in particular if the different aspects and objectives of migration policy are well coordinated and targeted to the needs of the respective partners. In any case, however, the use of trade policy instruments in migration governance can only be a complement to dedicated labour, humanitarian, and refugee migration policies that provide underlying protective environments. In no case should such policy instruments evolve into potential substitutes or surrogate solutions.

Sammanfattning

Denna rapport är den första heltäckande och longitudinella analysen som ger en överblick av sambandet mellan migrations- och handelspolitik i EU:s externa relationer. För det första behandlar rapporten hur migrationspolitiska bestämmelser inkluderades i EU:s handelspolitiska instrument från 1960-talet och framåt. Innehållet i och framväxten av dessa handelspolitiska instrument analyseras sedan mot bakgrund av EU:s migrationspolitiska utveckling. För det andra sätter rapporten fokus på utformningen och implementeringen av de senast initierade instrumenten som kombinerar handels- och migrationspolitik – de så kallade 'compacts' som har uppnåtts tillsammans med Jordanien och Libanon. De båda länderna är viktiga aktörer när det handlar om migration i EU:s närområde. Som ett resultat av inbördeskriget och våldsamheterna i Syrien har de båda länderna tillsammans tagit emot cirka två miljoner flyktingar.

Det finns fyra sammanvävda syften med rapporten: 1) Att identifiera skälen till att man inkluderat migrationspolitiska mål i EU:s handelspolitik samt att bedöma i vilken utsträckning denna sammankoppling är resultatet av en övergripande och koordinerad migrationspolitik; 2) Att undersöka effektiviteten i denna koppling mellan handels- och migrationspolitik i praktiken; 3) Att identifiera faktorerna i denna koppling som bidrar till en effektiv och sammanhängande migrationspolitik i EU; 4) Att skildra de kontextuella förutsättningarna för denna förbindelse och hur det synkroniseras med målsättningar rörande humanitära rättigheter i styrningen av migrationen.

Genom att analysera EU:s handelsavtal, vilka tecknats på både multi- och bilateral nivå, samt de 'compacts' som beviljar handelsförmåner och "positiva incitament" i utbyte mot samarbete på migrationsområdet förs tre huvudargument fram av författarna. *För det första* visar den longitudinella analysen att kopplingen mellan EU:s migrations- och handelspolitiska instrument snarare är ett resultat av ad hoc lösningar, vilka tillkommit som reaktioner på externa händelser, än ett resultat av en strategisk och övergripande plan för migrationspolitiken. De handelspolitiska instrumenten tar idag upp aspekter som rör migranternas rättigheter, hur man ska underlätta ekonomisk rörlighet, kampen mot irreguljär migration samt återvändande och

slutligen mottagande och skydd av flyktingar. De olika beståndsdelarna hänger dock inte alltid ihop utan är bristfälligt integrerade i EU:s migrationspolitik och skulle tjäna på att bli mer koordinerade. I ljuset av de kontrasterande och ibland överlappande politiska prioriteringarna blir det tydligt att samspelet mellan handels- och migrationspolitik inte uppnår sin fulla potential. Därmed misslyckas politiken i att uppfylla målen, det vill säga en välfungerande migration och skydd av flyktingar. *För det andra* visar analysen av hur dessa policys genomförs i Jordanien och i Libanon att EU:s politik gentemot tredje land inte lyckas ta tillräcklig hänsyn till de olika geopolitiska, ekonomiska och sociala faktorer som påverkar politikens effektivitet. *För det tredje* visar analysen att denna sammankoppling mellan handels- och migrationspolitik har en problematisk sida när det gäller relationen till humanitära rättigheter. Sammankopplingen mellan dessa politiska fält kan snarare förstås i relation till den långvariga utveckling som skett inom EU där skyddet av de yttre gränserna och hanteringen av migrationen externaliserats. En slutsats i rapporten är att relationen och kopplingen mellan handels- och migrationspolitik är ett hitintills understuderat område, det finns stora möjligheter att förbättra det internationella samarbetet, särskilt om olika delar och mål inom migrationspolitiken är välkoordinerade och anpassade till respektive parterers behov. Men användningen av handelspolitiska instrument för att styra migrationen kan bara vara ett komplement till en engagerad migrationspolitik för arbetskraftsinvandring och en humanitär flyktingpolitik som kan ge skydd åt människor på flykt. Under inga som helst omständigheter borde sådana policyinstrument bli substitut- eller surrogatlösningar.

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List of Abbreviations

| | |
|---------------|--|
| AENEAS | Programme for Financial and Technical Assistance to Third Countries in the Areas of Migration and Asylum |
| ACP | African, Caribbean and Pacific Group of States |
| BV | Business Visitors |
| CETA | Comprehensive Economic Trade Agreement (EU and Canada) |
| ChAFTA | China-Australia Free Trade Agreement |
| CJEU | European Court of Justice |
| CSS | Contractual Service Suppliers |
| DG | Directorate General (European Commission) |
| ENP | European Neighbourhood Policy |
| EPA | Economic Partnership Agreements |
| EU | European Union |
| FTA | Free Trade Agreement |
| GAMM | Global Approach to Migration and Mobility |
| GATS | General Agreement on Trade in Services |
| GATT | General Agreement on Tariffs and Trade |
| GCM | Global Compact on safe, orderly and regular Migration |
| GoL | Government of Lebanon |
| GRC | Global Refugee Compact |
| HLWG | High-Level Working Group |
| ICT | Intra-Corporate Transferees |
| IFA | Investment Facilitation Arrangements |
| IP | Independent Professionals |
| LCRP | Lebanese Crisis Response Plan |
| MoU | Memorandum of Understanding |
| OECD | Organisation for Economic Cooperation and Development |
| PTA | Preferential Trade Agreement |
| RoO | Rules of Origin |
| SEZ | Special Economic Zones |
| TiSA | Trade in Services Agreement |
| UN | United Nations |
| WTO | World Trade Organisation |

1. Introduction and aim

Long regarded as a stronghold of state sovereignty and domestic affairs, migration policy has turned into a key area of foreign policy. The New York Declaration of 2016 and the ensuing UN Global Compacts on Safe, Orderly and Regular Migration (GCM) and on Refugees (GRC) acknowledge that “no state can address migration alone” (GCM Preamble para. 7). Notwithstanding ongoing political controversies within and between states, the understanding that migration cannot be meaningfully addressed without international cooperation is now widely accepted. It is also recognised that international migration is a complex, multi-faceted phenomenon that need a comprehensive approach.

In the absence of an overarching comprehensive international migration regime, cooperation on migration is therefore developing at various levels and in different fields, including foreign policy, security, development, environmental and trade policy (Lahav & Lavenex 2012). The potential use of trade policy instruments in international migration governance is acknowledged in objectives 2 and 18 of the GCM¹ and is at the core of the GCR's emphasis on increasing support for, and fostering the resilience of, host societies and refugees. The latest reform of the EU external migration policy, the 2015 European Agenda on Migration and the 2016 New Partnership Framework preceded this development when formulating the aim to mobilise the “full range of policies and EU external relations instruments” and to mainstream migration policy goals “into all EU policies, tools, and budget programming” (European Commission 2016: 13).

This report provides the first comprehensive review of the linkage between international migration policies and trade policies with focus on EU external

¹ See GCM Objective 2: Minimise the adverse drivers and structural factors that compel people to leave their country of origin para. (d) “Invest in sustainable development [...] including through [...] trade preferences”; and Objective 18: Invest in skills development and facilitate mutual recognition of skills, qualifications, and competences para. (c) “Conclude [...] mutual recognition agreements or include recognition provisions in other agreements, such as labour mobility or trade agreements [...]”

relations. Whereas economists have long analysed the mutual relationship between trade and migration flows, the political link between trade and migration policies has so far hardly been assessed in the literature. This report's original contribution is two-fold. First, the report retraces the inclusion of migration provisions in EU bilateral and multilateral trade policy instruments since the 1960s until today, and examines the political rationale guiding this trade-migration policy linkage. Second, the report offers the first systematic analysis of the design and implementation of the latest EU instrument combining trade and migration policies: the so-called "compacts" signed with Jordan and Lebanon in 2016, the two key regional refugee hosting states that together have received more than two million Syrian refugees.

In doing so, the report addresses the following research questions:

1. What approach is followed in the inclusion of migration provisions in EU trade policy instruments? Does this approach follow ad hoc prerogatives or a comprehensive, coordinated migration policy approach?
2. How effective is the nexus between migration and trade policy instruments in practice?
3. What determines variation in the outcomes of linking migration and trade policy instruments? What impeding and facilitating factors shape these outcomes on the ground?

Our analysis leads to mixed results. First, the longitudinal perspective highlights that the nexus between EU migration policies and trade policy instruments has evolved in an ad hoc manner and lack consistency. The introduction of migration provisions in trade agreements occurred in reaction to external influences rather than as a product of coordinated, strategic planning. As a result, trade policy instruments today address aspects related to migrants' rights, the facilitation of economic mobility, the fight against irregular migration (including readmission as well as the hosting of refugee populations), but these different elements are not linked in a comprehensive approach and would benefit from greater coordination. Second, and as a result of contrasting priorities and prerogatives, the trade-migration policy nexus takes an ambiguous shape and risks undermining both policy objectives. On the one hand, the introduction of sometimes controversial migration control objectives in trade agreements risks politicising an essential pillar of EU-third country relations, with potentially negative effects on economic and

overarching diplomatic relations. On the other hand, the introduction of trade instruments in migration policy (particularly in cooperation over refugee policies), risks deviating from established priorities and undermining the original goal of humanitarian protection. Third, we show that in order to understand the concrete effects that combining trade with migration policies has on refugees' lived realities, it is important to understand variation in partner governments' responses to such instruments. Geopolitical, economic, and social factors differ across contexts, moulding the EU's policy templates, and bringing about both intended and unintended consequences.

We conclude that the trade-migration policy nexus does provide hitherto understudied avenues for stronger international cooperation on migration, in particular if the different aspects and objectives of migration policy are well coordinated and targeted to the needs of the respective partners. In any case, however, the use of trade policy instruments in migration governance can only be a complement to dedicated labour, humanitarian, or refugee migration policies – in no case should they be potential substitutes.

The report is divided into six chapters. Chapter 2 provides a brief review of the relevant literature; it discusses the theoretical background and methodological approach undergirding our analysis. This report is jointly written, with Sandra Lavenex being the lead author for Chapter 3, and Tamirace Fakhoury being the lead author for Chapter 4.

Chapter 3 sets the context by retracing the emergence and evolution of the trade-migration nexus, first in the EU's external migration policy since the 1990s and second in the EU's trade policy, with a focus on preferential trade agreements. We show that, while EU external migration policy has approached trade agreements mainly as a tool for leverage in inciting third countries' cooperation on migration control and readmission, trade agreements concluded prior to the development of an EU migration policy already included relevant provisions on migrant rights. Besides, quite separately from the developing EU migration and asylum policies, trade agreements have come to include provisions facilitating the mobility of economic migrants in the context of cooperation on trade in services. Although concrete commitments in trade agreements have so far remained limited to mainly highly skilled professionals and mobility within multinational companies, newer agreements, for instance with Canada or the Cariforum countries, provide for wider

openings that go further in exploiting the scope provided by international trade law. This scope will be illustrated with reference to non-EU trade agreements that do provide for more ambitious mobility agendas. Chapter 4 examines the latest linkage between EU trade and migration/asylum policies, which consists of granting trade concessions to support first countries of asylum in the hosting and protection of refugee populations. More specifically, it provides detailed case studies of the implementation of the compacts concluded with Jordan and Lebanon in 2016, in the wake of the so-called Syrian refugee crisis.

As will be shown in chapter 4, both compacts have been largely conditioned by the EU's intent to revamp and fine-tune its role in external migration management following widespread displacement from Syria (Fakhoury 2019a). In this regard, the EU has explored trade facilitation schemes with partner governments, functioning as a set of positive incentives, to encourage Syria's neighbouring states to offer solutions and provide protection to displaced individuals on their soil. Jordan and Lebanon arise here as two prioritised countries for the implementation of this approach that is primarily concerned with building greater coherence between the EU's migration policy, its external action and the immediate challenges that face its neighbourhood (Fakhoury 2019a; European Commission 2016a). While the Jordan compact has met some of its goals and has already undergone a review in 2018, the Lebanese compact has remained merely declaratory. The case of Lebanon has hitherto hardly been assessed in academic and policy literature. Still, this case of policy failure is particularly instructive for identifying the processes, contexts, and conditions that shape the implementation of trade policies in the context of refugee situations. Exploiting commonalities and variation in the ways the EU compacts have been implemented in Jordan and Lebanon allows us to identify the facilitating versus impeding conditions that shape the outcomes of such instruments, and determine their effectiveness on the one hand and their desirability on the other. Against this backdrop, our analysis shows that while compacts are aimed at meeting these countries' as well as the refugees' and hosting populations' manifest needs, they remain disconnected from various contextual and local conditions that influence their implementation and weaken their effectiveness on the ground. Moreover, we show that, though the EU would like to brand the compacts as "innovative" policy tools, they still inscribe themselves within the Union's traditional repertoire of externalising migration control. In other words, they are geared at reducing the probability that displaced people move onwards towards seeking asylum in Europe.

Chapter 5 turns back to the report's overarching questions and discusses the genesis and evolution of the trade-migration policy nexus in EU migration, with trade and external policies towards Jordan and Lebanon in perspective. Summarising the main findings of the individual sections, this concluding chapter recapitulates synergies and inconsistencies in the EU's use of trade instruments for migration policy purposes, and specifies the factors that have facilitated and/or impeded the effectiveness of trade agreements for migration governance.

Chapter 6 draws on these conclusions for presenting our key policy recommendations.

2. Theory discussion, methods and sources

2.1. Literature review

The development towards migration policy as a key area of international relations is relatively recent (Lahav & Lavenex 2012) and can be observed in the increasing role migration issues have in different fields, such as foreign policy, international security, development, and both environmental and trade policy. In the absence of an overarching international regime, migration policy goals have become "embedded" (Betts 2011) in various international regimes which are primarily dedicated to another policy area. The webs of international migration cooperation cut across policy areas and levels of governance: they include a thin level of multilateral commitments, as well as an increasing number of regional and trans-regional, along with bilateral, initiatives (Kunz, Lavenex & Panizzon 2011; Lavenex 2018; Fakhoury 2019a).

One traditional area of multilateral, regional, trans-regional, and bilateral cooperation in which migration provisions have found entry is trade policy. The relationship between trade and migration is a long-standing preoccupation in international economics. The traditional research question is whether trade and migration are complements or substitutes. These studies examine whether growing trade volumes can reduce pressures for migration – and thus act as substitutes – or whether migration tends to increase demand for traded goods and services, in which case they are complements. The focus is thus on the outcome of trade and migration policies in terms of commercial and migration flows, rather than on the policies themselves (see Campaniello 2014; Chiswick & Miller 2015; Clemens 2014; Ghani et al. 2019; Mahendra 2014; Metulini, et al. 2018; Peters 2017; UNCTAD 2018).

This Delmi report, in contrast, analyses the interplay between migration and trade from institutional, policy, and longitudinal perspectives, highlighting change and continuity in the ways the EU has associated migration with trade in its foreign policy. It assesses the migration-trade policy linkage both with regard to the introduction of migration policy goals in trade policy instruments

(multilateral in the framework of the World Trade Organization (WTO)), in regional and bilateral Preferential Trade Agreements (PTAs), and with regard to the use of trade policy instruments in migration policy. The focus is on the European Union (EU), the evolution of migration policy provisions in its commercial agreements concluded with third countries, and the more recent efforts to leverage trade policy instruments in fighting irregular migration and addressing refugee crises.

From this perspective, the analysis in this report speaks to several different literature streams. In the field of migration studies, it speaks to the literature on international cooperation on migration (i.a. Betts 2011; Money & Lockhard 2019), EU external migration policies (Lavenex & Uçarer 2002; Carrera, Kostakopoulou, Panizzon 2018; Zaiotti 2016), the international regulation of labour migration (Trachtman 2009; Peters 2017), and new developments in refugee policy (Betts & Collier 2017). Insofar as migrant rights have found entry into EU trade agreements, this analysis is also related to the literature on the international promotion of migrant rights (Geiger & Pécoud 2020). The focus on the ways in which migration policy has been linked to trade policy also speaks to the literature on international trade, and in particular, research on issue-linkages between trade and other fields, such as environmental policy or labour protection (Ghosh 1987; Milewicz et al. 2018). In theoretical terms, the question of how trade policy instruments are used to foster cooperation on migration governance speaks to the International Relations literature on issue-linkages in international cooperation (Axelrod & Keohane 1985).

In addition, the identification of migration governance provisions across diverse international institutions, such as preferential trade agreements, is illustrative of the phenomenon of regime complexity (Alter & Meunier 2009; Keohane & Victor 2014) describing the proliferation of international regulations across institutional venues and sectors. Whereas this literature has addressed the phenomenon of international cooperation being spread across sectoral institutions and international regimes predominantly from an institutionalist perspective, we add a critical normative/evaluative angle that highlights the potential tensions and trade-offs resulting from the trade-migration policy nexus. This concerns, in particular, the use of trade policy instruments as a means to keep refugee populations in first countries of asylum. While such support to both the host and refugee societies can be a

useful supplement to existing policies, the emphasis on the question of economic resilience can also shift the attention away from the idea of protection and herewith undermine the fundamental principles and norms of the international refugee regime (Bakewell 2003; Pascucci 2017).

Against this background, the report bridges the gap between three distinct literatures: analyses of the EU's attempt to externalise migration control (Collyer 2016), to consolidate asylum regimes and refugee rights in its vicinity (Fakhoury 2019 a&b), and to mainstream migration in its foreign policy instruments. This links up with the burgeoning literature on the so-called "security-stability" nexus, considered as the "master frame" characterising the EU's policy approach towards its neighbouring countries (Roccu & Voltolini 2017, 2; Tocci & Cassarino 2011). In this view, the EU aims at preserving stability in the "near abroad" to maximise its own security (Roccu & Voltolini 2017, 2). In the specific field of migration and refugee governance, the EU has sought to protect its security interests through a variety of policy scripts that couple regional stabilisation with bordering practices. Examples are externalising migration management (Cassarino & Del Sarto 2018; Puig 2016; Oliveira Martins & Strange 2019) and devising refugee solutions in neighbouring first countries of asylum (Fakhoury 2019a). Geared towards "stabilisation" and capacity-building in countries situated in the EU's vicinity, these scripts also cater to the EU's security imperatives and bordering practices (Balasiewicz et al. 2013; Oliveira Martins & Strange 2019). Expanding on this literature, our analysis of the Jordan and Lebanon compacts also contributes to critical investigations into the political economy of displacement that positions refugees as "entrepreneurs" and economic agents, shifting the gaze away from rights-based protection (Ramsay 2019; Turner 2020).

2.2. Method and sources

This study is a continuation of previous research conducted by the authors on related topics. This includes previous work on the inclusion of mobility provisions (Lavenex 2006b; Lavenex & Jurje 2015; Lavenex 2018) and immigration control/readmission clauses (Lavenex 2002; Jurje & Lavenex 2014) in EU, international, and other regional trade agreements, and on EU external migration policies (Lavenex 1999; Lavenex & Uçarer 2002, 2004; Lavenex 2006a; Lavenex & Kunz 2008; Lavenex & Stucky 2011; Kunz, Lavenex & Panizzon 2011; Lavenex 2018). The analysis of the EU compacts with Jordan

and Lebanon links up with Tamirace Fakhoury's expertise on EU migration policy towards the Arab States and the geopolitics of the Arab region (Fakhoury & Ozkul 2019; Fakhoury 2021; Fakhoury 2020a; Fakhoury 2020b; Fakhoury 2019a; Fakhoury 2019b; Fakhoury 2017a; Fakhoury 2017b; Fakhoury 2014).

This is a qualitative study with two distinct parts. The first part consists of a longitudinal content analysis of migration provisions included in EU external trade agreements (Chapter 3). This content analysis combines the legal and political interpretation of such legal provisions and covers all relevant EU agreements at the multilateral and bilateral levels. The second part of the report consists of two detailed case studies of policy implementation (Chapter 4). We focus on the most recent manifestation of the EU policy instruments that seek to join trade and migration policy: the so-called "compacts". The choice of the Lebanon and Jordan compacts as our key cases for assessing the implementation of the trade-migration policy nexus is motivated by two key factors. First, following the adoption of the 2015 European Agenda on Migration in the wake of the so-called Syrian refugee crisis, the EU has devised a variety of policy tools to ensure greater coherence between its role in migration management, the effectiveness of its external policy, and its capacity to help partner governments to bounce back in the face of upheavals and displacement (Fakhoury 2019a). In this context, the EU selected Lebanon and Jordan as two key pilot case studies for the implementation of this new approach (European commission 2016a, 13). Second, Jordan and Lebanon have, since the onset of displacement from Syria, received more than two million refugees. As they have evolved into key regional refugee hosting states in the EU's "near abroad", the EU has scaled up its cooperation with these two partner governments substantively, deploying an array of positive incentives including trade facilitation schemes to maximise cooperation around migration. In other words, Jordan and Lebanon are highly relevant for the understanding of how the EU has sought to test the compacts as partnerships set to respond to third countries' challenges while addressing the EU's need for more effective migration management. At the heart of this comprehensive partnership lies the EU's intent to use trade and development policies as effective avenues to reward countries cooperating with the Union on migration governance (European commission 2016a, 17).

Given that our aim is to assess how effective the compacts have been in harnessing the potential of EU trade policies in the context of forced displacement, we investigate key contextual factors in both Jordan and Lebanon and with regards to their relationship to the EU that have moulded the implementation of such tools. Our aim is not to undertake a comparative analysis of Lebanon and Jordan as regional refugee hosting states. Rather, we are interested in the various ways through which contextual factors have respectively shaped the implementation of the compacts in both countries. These factors include the political stability of the host governments, the degree of coherence in their asylum policy, the two countries' employment and labour policies, the degree of inclusion of Syrian refugees in respective countries, the impact of Syria's neighbouring war, and their readiness to negotiate trade agreements with the EU in the context of forced displacement. To assess the effectiveness of the trade-migration policy nexus, we cannot ignore a determining variable, which is the balance of trade between the host government and the EU, and whether the partner government is in a position to benefit from what the EU has to offer (in terms of trade facilitation schemes and preferential agreements) (Temprano Arroyo 2017). Without an appraisal of such factors and the extent to which they have impeded or facilitated the implementation of the so-called compacts, it remains an abstract endeavour understanding how the EU's trade-migration nexus is able to meet the objectives it spells out at the outset. By carrying out this case study analysis, we contribute moreover to the broader literature that seeks to problematize the various geopolitical, economic and social conditions that affect the EU's external policy and its effectiveness in its neighbourhood (Wunderlich 2011). It is only by assessing these overarching contextual factors that we can understand why the EU-Jordan compact is an example of an agreement that has been implemented in practice, albeit with mixed results, and why the EU-Lebanon compact is an example of an agreement that has not passed the implementation threshold. Further research could draw on these overarching factors as guiding tools to assess how compacts have materialised in other contexts, such as Ethiopia.

In terms of the sources, the study is based, in addition to the analysis of secondary literature, on original sources stemming from official policy documents, and in particular, the qualitative analysis of migration policy commitments in trade agreements concluded by the EU with third countries, as well as regional and bilateral preferential trade agreements conducted by

non-EU countries relevant for the analysis. Further, this analysis draws on interviews with the Migration and Trade Directorates in the European Commission, and intensive fieldwork in Jordan and Lebanon. The two in-depth case studies were conducted under the leadership of the Lebanese co-author of this report, Professor Tamirace Fakhoury, and therefore benefit from local expertise, including the knowledge of Arabic, which has greatly benefited the inclusion of local written sources and the conducting of interviews. Between 2011 and 2020, we attended more than twenty policy-orientated workshops on refugee programming in Lebanon and Jordan on the one hand, and on the EU's cooperation with both hosting states, on the other. We have also conducted jointly or individually more than a dozen informal conversations with Jordanian and Lebanese policymakers and civil society activists on the 2016 compacts and their implementation. Given the scarcity of sources and publications on the EU-Lebanon compact (unlike the EU-Jordan compact, which has already inspired a plethora of literature (Lenner & Turner 2018)), we carried out semi-structured expert interviews with key stakeholders in the Lebanese Ministry of Foreign Affairs and Emigration (Ministry in charge of cooperation with the EU), the Ministry of Economy and Trade and the State Ministry for the Displaced (dissolved in 2020) in 2019. Additionally, we conducted interviews with officials from the EU Delegation in Lebanon, the UN Refugee Agency (UNHCR), the International Labour Organization (ILO) Office in Beirut, the World Bank, and a couple of European organisations based in Lebanon. We further carried out in-depth interviews with civil society activists and Lebanese NGOs who have been involved in refugee projects financed by the EU. The aim was three-fold. First, our objective was to understand how the EU and Lebanon have jointly cooperated in the multi-level governance of displacement. Second, we sought to analyse how Lebanon and the EU have cooperated and clashed on the formulation and implementation of the compact. We aimed to understand policy imperatives, expectations, and perceptions at both ends. Third, the aim was to gain insights into whether, and if applicable, how the compact was integrated and embedded within Lebanon's broader refugee programming towards displaced Syrians, and why, in the final analysis, it remained a mere declaratory statement. These interviews gave us deep insights into the clashing expectations and perceptions between EU officials and their Lebanese counterparts on trade facilitation schemes on the one hand, and refugee stay and employment, on the other.

In a broader perspective, this fieldwork has allowed us to embed the Lebanon and Jordan Compacts within the broader geopolitics of refugee management, and to understand how clashing or convergent policy perceptions and expectations between EU and local officials, as well as socio-economic variables and endemic challenges in the two host states, have shaped the course of the compacts. As underscored, the methodological aim was not to compare both host states, rather to understand how contextual and geopolitical conditions in both host economies have shaped the implementation of the compacts, leading to varying results and consequences. By investigating the varying contextual factors that have shaped the compacts' implementation, we hope to contribute to an intersectional or "multi-strand model" of policy-making in which the EU would map, envision, test, and monitor such policy instruments in a way that could better capture the interrelationships as well as tensions between various policy components and the forms of inequity that they might generate (Hankivsky 2012).

3. Genesis and Evolution of the Trade-Migration Nexus

3.1 The Trade-Migration Nexus in EU Migration Policy

The trajectory of migration provisions in EU trade agreements broadly follows the path of European integration. It takes its point of departure in the progressive realisation of the single market, including freedom of movement, and its external repercussions in relations with third countries from the 1960s onwards. EU migration policy towards third country nationals, in contrast, is a relatively new area of EU competence² and is still largely shared with member states. The ambition to address migration policy in foreign relations was officially embraced at the Tampere European Council of 1999 with an external policy agenda. This external agenda has progressively been widened in line with the increasing prominence of migration in politics. From a more limited focus on migration control, cooperation and readmission to a comprehensive approach that spills over to other EU external policy areas such as development, foreign affairs, security, and trade policy. Long dominated by the concern to reduce irregular migration and facilitate the return of irregular migrants through readmission agreements with third countries, the so-called Arab Spring and, in particular, the war in Syria have spurred new attention to the situation of refugees and forcibly displaced persons.

It is important to note that aspects of migration policy have been part of trade policy instruments for a long time. Even though the fight against irregular migration and the protection of displaced people in regions of origin are the most dominant frames of EU's external migration policy today, migration as a part of trade policy instruments has been present well before the development of an EU agenda on immigration control. The trade-migration nexus in the single market: mobility of workers and service providers

² 'Competence' here refers to the legal authority (for a court or other body) to deal with a certain matter

The first clauses in EU trade-related agreements addressing migrants from third country nationals were derived from the single market project and the internal system of freedom of movement for EU nationals (Guild 1992). The EU's first association agreement with a third country, the 1963 Ankara Agreement with Turkey, contained provisions extending free movement rights to Turkish nationals. The Ankara Agreement was concluded to make Turkey an associate member of the European Economic Community (EEC), to establish a customs union and to possibly pave the way for a Turkish membership to the EEC. Article 12 refers to the progressive realisation of the free movement of workers between the EEC and Turkey. Article 13 provides for the abolishment of restrictions on the freedom of establishment between the EEC and Turkey. Both articles are based on the corresponding Articles of the EEC Treaty.³ Article 14 commits the contracting parties to do away with the restrictions on freedom to provide services between them. These provisions are only brief and rather vague in their wording. More concrete provisions are included in Article 36 of the 1970 Additional Protocol, which provided for the gradual establishment of free movement by 1986, with the process managed by the Association Council. As is well known, freedom of movement was never extended to Turkish nationals. However, the status of migrant Turkish workers in the EU single market was improved by Association Council Decisions 2/76, 1/80 and 3/80. Since 1987, European Court of Justice (CJEU) case law has strengthened the application of these norms through direct effect and a teleological interpretation, so that today Turkish migrant workers legally residing in the EU enjoy largely equivalent rights to EU nationals.⁴ Provisions on self-employed persons and service providers were not deepened in a comparable manner, however CJEU case law did also determine certain rights here deriving from the 1963 Ankara Agreement and the 1970 Additional Protocol that inter alia provided for a stand-still on the rights of Turkish nationals in the EU (Tans 2015: 156ff).

³ Articles 48, 49 and 50 EEC Treaty for freedom of movement and Articles 52 to 56 and Article 58 EEC Treaty for the right to establishment.

⁴ See the case law: Narin Tezcan-Idriz, Free movement of persons between Turkey and the EU: To move or not to move? The response of the judiciary, CMLRev 2009, pp.1621-1665 and K Groenendijk 'Citizens and Third Country Nationals: Differential Treatment or Discrimination?' in JY Carlier and E Guild (eds) *The Future of Free Movement of Persons in the EU* (Bruylant, Brussels 2006), p 97-98.

The Ankara Agreement provides the most complete system of protection of third country nationals already residing in the Member States of the Union (without counting the countries of the European Economic Community and Switzerland under the respective Agreement). These rights comprise protection and security of residence for workers and their family members, as well as guarantee non-discrimination in working conditions and social security. Deriving legislation and jurisprudence from the principles of the single market, Turkish workers have gradually been entitled to renew their work and residence permits after one year's employment in the territory of a Member State, after three years to change employment within the sector and, after four years of employment, free access to the labour market of the Member State (Groenendijk, Guild & Barzilay 2000; Tezcan-Ildriz 2009; Groenendijk 2006).

The Maghreb Agreements with Algeria, Morocco, and Tunisia of 1976 were less comprehensive than the association treaty with Turkey. Yet these agreements also provided protection from discrimination in working conditions, dismissal, and social security for migrants from these countries working in an EU member state. While not covering freedom of movement, these agreements codified important social and economic rights in the context of labour migration, thus echoing the content of the conventions of the International Labour Organization (ILO) no. 97 of 1947 and no. 143 of 1975, and preceding the further codification of such rights in the 1990 UN Convention on the Rights of Migrant Workers and their Families. Again, the CJEU played an important role in the interpretation of the right to non-discrimination, especially in regard to access to social security benefits both for the migrant workers and their family members. A similar provision protecting workers from discrimination in working conditions and social security is also to be found in Annex VI of Lome IV, but it is disputed whether this provision, because of its placement in an Annex, is capable of direct effect (Groenendijk, Guild & Barzilay 2000).

The next generation of agreements were those concluded with the candidate countries of Central and Eastern Europe. In view of preparing for accession, these provided for a right of free movement for the purpose of self-employment and a degree of protection from discrimination in working conditions.

While early association agreements derived migration provisions either from the free movement of workers or of services within the EU, the conclusion of the 1995 General Agreement on Trade in Services (GATS) in the World Trade Organisation (WTO) turned mobility linked services into a general matter of trade liberalisation. In the GATS, WTO members agreed to facilitate the temporary mobility of certain limited categories of natural persons providing cross-border services, including intra-corporate transferees, independent professionals, and contractual service-suppliers in specified sectors. Subsequent trade agreements concluded bilaterally between the EU and third countries that cover trade in services have emulated and selectively extended such mobility commitments related to trade in services (see Chapter 2).

In sum, in the EU context, the first manifestation of a trade migration policy nexus was derived not from a (at the time, non-existent) common migration policy, but from the externalities of single market integration. These externalities refer to the internal freedom of mobility for EU workers, social and economic rights of workers from associated countries and their families, as well as mobility rights in the context of trade in services. As we show below, this genuinely economic configuration of the nexus persists in EU trade relations but has developed surprisingly little connection to the common European asylum and immigration policies developed from the late 1980s onwards.

The trade-migration nexus in EU asylum and migration policy: irregular migration and readmission

In contrast to the EU's long-standing competence in trade policy, asylum and immigration policy entered the EU agenda relatively late. Asylum and immigration were recognised as matters of common interest in the context of the 1985 Schengen Agreement and were officially embraced in the EU framework with the 1992 Maastricht Treaty. From the outset, this cooperation focused on the control of immigration from third countries. The objective of this cooperation was to elaborate compensatory measures for the safeguarding of internal security after the abolition of internal border controls.⁵ Although subsequent EU treaties and secondary legislation have developed a more comprehensive cooperation agenda, in particular regarding

⁵ See Schengen Implementation Convention of 1990 and Article K1 of the Maastricht Treaty.

asylum seekers, long-term resident third country nationals in the EU, and limited categories of third-country workers⁶, the area in which the member states have been most supportive of common policies remains the fight against irregular migration. This is also the focus that has predominated in the so-called external dimension of the EU's migration policy, even if over time EU institutions and Council conclusions have repeatedly called for a comprehensive approach and a stronger balance between repressive and permissive elements (Boswell 2003; Lavenex 2006a; Lavenex 2018). In this context, EU trade and more encompassing association agreements have been recognised as useful tools for engaging countries of transit and the origin of migrants in a wider system of migration control. In this section, we retrace in broad lines the evolution of this external dimension of the EU's external migration policy in order to set the historical, institutional, and political context in which EU migration policies have developed a bond with trade policy instruments.

The launch of the external dimension

Whereas member states, represented by their justice and home affairs ministers, framed migration cooperation from the outset as a matter of internal security in the Union, the Commission had a wider view on the topic. As early as 1991 and again in 1994, the Commission proposed a so-called 'global approach', a three-pronged strategy consisting of controlling immigration, strengthening integration policies, and "taking action on migration pressure, particularly through co-operation with the main countries of would-be emigration to Europe" (COM 1994: 11). Interestingly, this early notion of a 'global approach', unlike the GAM of 2005 (discussed below), did not yet contain initiatives on creating opportunities for legal migration. Further, cooperation with third countries was not linked to migration control measures such as border controls or readmission. Although this comprehensive approach proposed by the Commission was not endorsed by the Council of Ministers, it reappeared more forcefully at the end of the 1990s after the adoption of the Amsterdam Treaty and the Tampere European Council.

Under the Treaty of Amsterdam (1997), immigration and asylum cooperation was transferred from the so-called third pillar to the more supranational first

⁶ In particular the Blue Card and the Intra-Corporate Transferees Directive for highly skilled workers and the Directives on seasonal workers, students, and researchers.

pillar. This shift in the allocation of competencies led to a more robust role for the European Commission, not just in proposing policy, but also in negotiating agreements with third countries. Two years after the adoption of this treaty, and under the impression of the Kosovo refugee crisis, the Tampere European Council proclaimed a comprehensive approach to migration. This approach addressed political, human rights and developmental issues in countries and regions of origin and transit, and a concept for partnership with third countries as the basis for the success of such a policy (EU Presidency Conclusions 1999: §10–12). It was also at the Tampere European Summit that the external dimension of the EU's migration policy was officially embraced. Article 11 of the 1999 Conclusions reads:

The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts, consolidating democratic states, and ensuring respect for human rights, in particular the rights of minorities, women and children. To that end, the Union as well as Member States are invited to contribute, within their respective competence under the Treaties, to a greater coherence of internal and external policies of the Union. Partnership with third countries concerned will also be a key element for the success of such a policy, with a view to promoting co-development. (Council 1999, Art. 11)

The issue of 'legal migration' was included in this framework from the outset: the European Council acknowledged the need for closer coordination of national legislations on the conditions for admission and residence of third country nationals and called for "the development, in close co-operation with countries of origin and transit, of information campaigns on the actual possibilities for legal immigration" (EU Presidency Conclusions 1999: §10–12). In addition, the High-Level Working Group (HLWG) on Migration and Asylum was created within the Council of Ministers and charged with the elaboration of 'cross-pillar Action Plan' for selected countries of origin and transit, thus paving the way for a more preventive approach (Boswell 2003). One year later, in November 2000, the Commission issued a first Communication entitled 'On a common immigration policy', which laid out all key elements of today's debate on partnership with third countries in the field of legal migration. It listed a series of arguments in favour of admitting legal migrants, such as increasing

flows of irregular migrants, demographic changes or shortages of skilled and unskilled workers in the EU, and introduced the notion of partnership with the statement that the EU should "take a responsible attitude towards the effects of emigration on the countries of origin taking into account the very different economic, demographic, social, political, and human rights situations in each one which cause the migratory flows" (COM 2000: 7). Key concepts such as the idea of "channels for legal immigration to the Union for labour migrants", as well as programmes on circular migration that would contribute to the importance of migrants as actors for development, were included in this Communication.

At the time, member state governments were not ripe for the Commission's comprehensive approach. Rejecting a 2001 Commission proposal for a Directive on economic immigration, the Council of Ministers asked the Commission to prepare a series of Communications that aimed at providing a common framework to address the problems arising from irregular migration. Effective returns emerged as the first priority for which the cooperation of third countries should be solicited. The urgency attributed to cooperation with third countries also stemmed from the perception that their lack of participation in the management of migration flows was the main source of difficulties with migration. Therefore, means should be found to ensure their cooperation. According to the Commission:

Member States' Justice and Interior Ministers recently expressed their view that the main problem does not lie in strengthening the cooperation between Member States but is rather attributable to the unwillingness of third countries to take back their nationals and to ensure sustainable returns. They have, therefore, the clear expectation that the third countries concerned should be *put under pressure* to be more cooperative both by the Community and by the Member States. (COM 2002b: 9, emphasis added)

The search for leverage

From then on, the search for effective means to commit third countries to participate in the readmission of irregular migrants became the first priority. With the Amsterdam Treaty, the conclusion of readmission agreements had become an EU competence. But the insistence of the EU that third countries under a readmission agreement should commit to take back not only their own nationals staying irregularly in the EU, but also third country nationals, turned

out to be a major impediment in negotiations. In the words of the Commission, the difficulty with readmission agreements is that as these

are solely in the interest of the Community, their successful conclusion depends very much on the 'leverage' at the Commission's disposal. In that context it is important to note that, in the field of JHA, there is little that can be offered in return[...] (Commission 2002: 23)

It is in this context of searching for something to "be offered in return" that the Commission and the member states started to look into economic cooperation and a link with trade agreements. The Commission's first step was to create a new budget line (B7-667) to support 'Cooperation with third countries in the area of migration'. In 2004, this was replaced by a multi-annual financial framework for the years 2004-2008 with a total amount of €250 million (the so-called Aeneas Programme). Apart from the general goal of supporting third countries' efforts to improve the management of migratory flows, the Regulation stresses stimulation of third countries' readiness to conclude readmission agreements, and assistance in coping with the consequences of such agreements. The second measure to gain leverage towards third countries was "increasing complementarity with other Community policies in order to help achieving the Community's objectives in the field of return and readmission" (Commission 2002: 24).

It is here that the first explicit link between trade and migration policy instruments was established. The Spanish-British initiative by then Prime Ministers Blair and Aznar to make development aid and trade concessions conditional on third countries cooperating on migration control was rejected due to the opposition of other member states and, in particular, Sweden. The final conclusions of the June 2002 Seville European Council, however, did confirm a certain conditionality (European Council 2002). First, it was agreed that each future EU association or cooperation agreement should include a clause on "joint management of migration flows and compulsory readmission in the event of illegal immigration". The handling of readmission clauses changed insofar as there is now an obligation to negotiate a supplementary treaty with the entire Community, not just individual member states. In addition, such clauses became mandatory: the EU decided to no longer sign any association or cooperation agreement unless the other side agrees to the standard obligations regarding readmission and migration management. The

Seville Conclusions also decided that inadequate cooperation by a third state could hamper further development of relations with the EU, following a systematic assessment of relations with that country. And, finally, if a non-EU state demonstrated "an unjustified lack of cooperation in joint management of migration flows", according to the Council following a unanimous vote, then the Council, after "full use of existing Community mechanisms", would decide about "measures or positions" as part of the EU's foreign policy or other policies. These actions should be "honouring the Union's contractual commitments and not jeopardising development cooperation objectives" (European Council 2002).

This agenda took up developments that had effectively already taken shape in EU relations with its southern neighbours. The association agreements signed with Tunisia (1998) and Morocco (2000) introduced irregular migration as one of the first priorities in the field of cooperation in social affairs.⁷ The Cotonou Agreement of June 2000 exceeds in significant ways the previous treaties and includes far-reaching rules on readmission and the fight against irregular migration (see Lavenex, 2002: 169 f.). The sensitivity of these rules is reflected in the controversial negotiations on the Agreement, where the African, Caribbean and Pacific (ACP) countries have successfully opposed the EU's intention to include an obligation to readmit not only own nationals staying irregularly in a member state, but also third country nationals (see Lavenex, 2002: 169 f.).

These priorities were soon also translated into other EU programmes with candidate countries, southern neighbours, the countries of the Western Balkans and Eastern Europe and Central Asia. In addition, specific financial instruments were designed to deal with external migration policy, such as the budget line B7-667 between 2001 and 2003 or the subsequent Programme for Financial and Technical Assistance to Third Countries in the Areas of Migration and Asylum (AENEAS). These programmes, which have financed predominantly projects relating to irregular migration, border control and migration management, reflect the notion of conditionality mentioned above with their preference for 'those third countries actively engaged in preparing or implementing a readmission agreement initialled, signed or concluded with the European Community' (European Parliament et al. 2004: 1). In 2003, the

⁷ Art. 69 and 71 of the respective Agreements.

Council for General Affairs set out a so-called monitoring and evaluation mechanism that selected a series of third countries to be monitored on their existing national legislation aimed at preventing and combating illegal migration, their implementation efforts in migration management, border control and interception of illegal immigrants, as well as their cooperation on readmission. It was reiterated that "insufficient cooperation could impede closer relations with the Union" (Council of the European Union 2003: 26). Last but not least, it is worth noting that the first Community budget programme AENEAS – as stated in the regulation – aimed 'to stimulate third countries' readiness to conclude readmission agreements, and to assist them in coping with the consequences of such agreements" (European Parliament et al. 2004: 1).

It is in this context that the idea of offering channels for legal migration in exchange for engaging in the fight against irregular migration took shape. At an informal meeting of the Justice and Home Ministers in autumn 2003, the Italian Presidency proposed "to conduct a study to define a legal migration quota system for Europe to be offered to the countries of origin and transit of the main legal migration flows in order to obtain their cooperation in reaching an agreement on admission" (COM 2004: 3). In the study, direct impact was attributed to the case of one Member State that had reported positive experiences with such package deals. Having realised that it lacked leverage in dealing with non-cooperative countries, the Union started examining the addition of new incentives beyond visa facilitation or financial and technical support, thus preparing the most central element of concept of Mobility Partnerships – the flagship of the Global Approach embraced in 2005.

The Global Approach to Migration (and Mobility)

The next major step in the evolution of trade-migration control nexus came with the 2005 Global Approach to Migration, which specified three areas for cooperation with third countries: (a) cooperation on legal migration, (b) the fight against irregular migration, and (c) the nexus between migration and development. In the wake of the Arab uprisings, this approach was reformed and the 2011 Global Approach to Migration and Mobility (GAMM) added a fourth area of cooperation: asylum and the protection of refugees. The 2011 document launching the GAMM makes explicit reference to trade policy as a means to tackle migration:

The Global Approach should be even more linked and integrated with the EU's external policies. The Global Approach is to be defined in the widest possible context as the overarching framework of EU external migration policy, complementary to other, broader objectives that are served by EU foreign policy and development cooperation [...] more efforts are needed in order to harness fully all potential synergies between these policies and with **trade policy**. (European Commission 2011: 4, emphasis added)

From 2005 to 2015, the main instrument of the global approach has been the so-called Mobility Partnerships, a non-legally binding memoranda of understanding aiming to improve cooperation on the four areas of the GAMM.⁸ Although proclaimed as "flagships" of the global approach, evaluations of the mobility partnerships converge in the observation that member states have privileged cooperation against irregular migration over the other three areas, and that no meaningful opening for legal migration or mobility has been introduced in these frameworks (Lavenex & Stucky 2011; Reslow 2015). While no meaningful avenues for legal migration were opened, some mobility was promoted in a connected but separate context: the linkage of agreements facilitating access to Schengen Visa in connection with readmission agreements. Visa facilitation agreements, albeit concerning only the Schengen – tourist visa, became the EU's main carrot in promoting the readmission agenda. However, even this carrot showed its limits, as in the case of the Maghreb countries or Lebanon, which have so far refused to cooperate on readmission (for Lebanon see the case study in Chapter 4).

With the increasing politicisation of migration in Europe and the crisis of the European asylum system, EU actors have reinforced their efforts to tackle migration in EU's external relations and the nexus with trade policy instruments figures prominently in the most recent strategy, the Partnership Framework adopted in 2016. According to the corresponding Commission Communication:

The ultimate aim of the Partnership Framework is a coherent and tailored engagement where the Union and its Member States act in a coordinated manner putting together instruments, tools and leverage to reach

⁸ Such Partnerships have been concluded with Cape Verde (2008); Georgia (2009); Moldova (2008); Armenia (2011); Azerbaijan (2013); Morocco (2013); Tunisia (2014); Jordan (2014); and Belarus (2016).

comprehensive partnerships (compacts) with third countries to better manage migration in full respect of our humanitarian and human rights obligations. To make change happen, the full range of policies and EU external relations instruments have to be brought to bear. This means a change in approach and fresh thinking with a mix of positive and negative incentives and the use of all leverages and tools. (European Commission 2016: 6)

Central in these external migration policy strategies is the idea to develop “partnerships” with countries of transit and origin to tackle the different aspects of migration. While the EU continues to develop Mobility Partnerships, the 2016 Partnership Framework introduces a new type of policy instrument referred to as “compacts”. The compacts echo the process-oriented soft-law approach of the Mobility Partnerships but go beyond the latter by addressing the migration phenomenon in an even broader manner making use of all relevant EU external policy instruments, including the EU’s most important foreign policy tool, trade agreements. According to the 2016 Communication:

Each compact will be designed with appropriate packages which combine different policy elements within EU competence (neighbourhood policy, development aid, **trade**, mobility, energy, security, digital policy, etc.), leveraged towards the same objective. This refocused and reprogrammed use of all policies must be mirrored by the Member States when it comes to national policy tools and incentives. (European Commission 2016: 8, emphasis added)

Summary

The evolution of the external dimension of the EU's migration policy documents the gradual insertion of migration policy goals in EU external economic relations. This development must be interpreted against the objectives of EU cooperation on migration and the importance given to third countries as countries of origin and transit of migrants heading towards the Union. This historical context illustrates the ideational legacy of today's “New Partnership Framework” and of the attempt to mainstream migration policy goals in other EU external policies, including trade. This report zooms into two types of EU trade policy instruments that have developed a migration component, but have done so in very different ways: Preferential Trade Agreements (PTAs) including such PTAs with larger scope like association

agreements and Economic Partnership Agreements (EPAs); and second, informal arrangements that have a significant trade component, notably “compacts”.

It will be shown that in contrast to the GAMM, which has so far failed to open new channels for legal migration, opportunities exist in the services chapters and later also dedicated mobility chapters of trade agreements. Developed in the context of trade liberalisation, these provisions have not yet been connected to the EU's migration policy agenda. Driven by commercial rather than migration policy objectives, these provisions follow a liberalisation agenda geared at facilitating the cross-border mobility of executives, managers and other temporary migrants, especially in trade in services. While limited to the temporary mobility of highly skilled professionals mainly working for multinational corporations, international law provisions of the WTO's General Agreement on Trade in Services allow for a broader scope of liberalisation. Examples from PTA's concluded outside of the EU will be introduced to illustrate the scope for a more expansive agenda on economic mobility liberalisation.

The last chapter of the report turns to the most recent type of trade policy instruments linked to EU migration and asylum policies, the compacts signed in the context of the EU's New Partnership Framework adopted in 2016. In contrast to the PTAs and EPAs, that are genuine trade policy instruments, the compacts are the direct continuation of the global approach of the EU's migration policy retraced above. In a similar way as EU trade policy with regards to service mobility has remained detached from EU migration policy, migration policies in the context of the compact have only partially been coordinated with trade policy, leading to mixed results for Jordan and a lack of implementation in Lebanon.

3.2 Trade-Migration Nexus in EU Trade Policy

Rather disconnected from the EU's evolving (external) migration policy, a dynamic agenda on trade-related mobility rights has taken shape in preferential trade agreements (PTAs) as part of the liberalisation of trade in services. The door to this agenda was opened in 1995 with the inclusion of so-called “mode 4” mobility of natural persons in the General Agreement on Trade in Services (GATS) of the WTO (Lavenex 2004). Whereas current GATS ‘mode 4’

commitments are quite limited, recent initiatives and particularly regional and bilateral Free Trade Agreements (PTAs) gradually expand these clauses beyond the level attained in multilateral commitments. In this chapter, we first retrace the (perhaps unexpected) inclusion of mobility clauses in the GATS. Although GATS commitments on labour mobility are limited, they nevertheless constitute an exception to states' general reluctance towards multilateral and legally binding commitments regarding migration in general, and the admission of labour migrants more specifically. After a brief reflection of the motives that drive states to accept such provisions for particular types of workers linked to commercial ties, we turn to the analysis of EU commitments in the field and compare them with those of other major global powers. In addition, we also document the proliferation of service-trade related mobility liberalisation as a more general feature of regional economic integration.⁹

The economic rationale for including labour mobility in trade agreements

Migration policy has so far not been a stronghold of global governance. In contrast to the flow of goods and finance, where states have established strong international regimes, no parallel development has taken place for the mobility of persons. The debates around the GCM show that notwithstanding the recognition for stronger cooperation "there is still no consensus on whether global governance is really required, what type of global governance would be appropriate, and how it should develop" (Newland 2010: 331). With the exception of the international regimes for labour rights and refugees established in the interwar period, states have been reluctant to agree on binding multilateral migration norms (Betts 2011; Lahav & Lavenex 2012; Trachtman 2009). International cooperation has been addressed mainly by "soft" law, such as the Global Commission on International Migration, the UN High Level Dialogue on International Migration and Development, the Global

⁹ This chapter is based on earlier work in the framework of the projects funded by the Swiss National Science Foundation (SNF) and Swiss National Centres of Competence in Research (NCCR), namely NCCR "Trade Regulation", SNF Project "Understanding Power Transitions in the Global Economy" and NCCR "on the Move" directed by Sandra Lavenex. It draws in parts on the following publications emerging from these projects: Lavenex and Jurje 2015 and Lavenex and Jurje 2019.

Forum on Migration and Development – and, most recently, the Global Compacts.

This reluctance towards international rules and coordination is, however, only one side of the coin. A set of norms facilitating labour mobility has started to develop as part of trade agreements, particularly related to trade in services. The delivery of a service is often not separable from the physical presence of the person providing it (Sapir 1999: 52). Hence, the GATS included the mobility of natural persons as one of four modes of trans-border trade in services. The four modes are: electronic commerce, when a service moves electronically from one country to another (mode 1); movement of the consumer, when a person goes to another country to consume a service (mode 2); movement of juridical persons or a commercial presence, when a firm moves to another country to establish a presence (mode 3); and the movement of the service provider, when a natural person delivers a service in another country (mode 4). Thus, recognised as one essential mode of the cross-border trade in services, the temporary mobility of natural persons has become an essential element of newer trade agreements at the multilateral, plurilateral, regional and bilateral levels.

In this perspective, migration, as the cross-border flow of workers, constitutes the mobility of one factor of production amongst others. The European integration project has included this factor from the start together with the mobility of capital, goods and services as one fundamental freedom of the single market. At the global level, this agenda is driven by the rise of the service sector.

The demand and supply for foreign labour is no exception to the commodification of the factors of production in international trade. Whereas the potential exploitation of manual labour through the relocation of production processes from the industrial countries to low-wage economies in Africa and Asia has been observed from the 1970s onwards (Fröbel 1977), newer trade policies promoted by developed countries and multinational corporations target the facilitation of flows for highly skilled migrants. Conversely, developing countries have discovered their surplus of lower skilled workers, cheaper labour and the benefits of remittances as competitive advantages. This has led various countries (e.g., Bangladesh, China, Egypt, India, Indonesia, Pakistan, the Philippines, South Korea, Sri Lanka and

Vietnam) to develop government-sponsored programmes to promote emigration in specific professions (Massey 1999).

Although labour is an integral factor to all modes of production, the rise of the service sector has specific implications for labour migration. The delivery of a service is often not separable from the physical presence of the person providing it (Sapir 1999: 52). The expansion of trade in services began in the early 1980s and has by far exceeded growth patterns for trade in goods.

It is important to note that Western countries (including the EU) have partly followed different priorities in GATS mode 4 negotiations than emerging and developing countries. This is also relevant for bilateral negotiations in PTAs. Western service industries' main interests are linked to commercial presence abroad, thus implying the mobility of firms and, in the context of this transnationalisation, the mobility of managers and key personnel as intra-corporate transferees (ICTs) within these enterprises (Sassen 1998). Tight immigration laws and bureaucratic admission procedures have increasingly been identified as potential barriers to the inflow of foreign capital and key personnel. Other categories of service-providers de-linked from commercial presence (i.e. not employed by a multinational corporation) have not been liberalised to the same degree. However, the majority of developing economies do not have powerful multinational companies, but has instead developed a keen interest in facilitating the mobility of service providers independently from their attachment to multinational enterprises. Such categories include for instance Independent Professionals (IPs), who are self-employed, or Contractual Service Suppliers, who remain employed within their country of origin but are dispatched by their employer in the framework of a service delivered abroad (this corresponds to the "posted workers" in the EU internal services market).

Labour mobility in multilateral commitments: the GATS

The inclusion of labour mobility in the GATS treaty was not self-evident. When the industrial nations and the US decided to raise services onto the Uruguay Round in the mid-1980s, they faced opposition from the developing countries. Most developing countries are traders at the margin and not competitive in those sectors which interest the North. The second round of negotiations (1989–1990) was dominated by the clash of interest between developed and developing countries on how to address labour mobility. Western lobby,

particularly the European Service Forum and the US Coalition of Service Industries, had persuaded their trade officials that certain provisions in domestic immigration laws constituted barriers to trade, inhibiting the mobility within multinationals (Lavenex 2006b; Panizzon, 2010). This led developed countries to favour a limited liberalisation of temporary labour, primarily within multinational companies. Developing countries, in contrast, argued for a broader liberalisation. A group of eight developing countries¹⁰ presented a proposal which foresaw the (temporary) "cross-border movement of personnel covering unskilled, semi-skilled and skilled labour" (Art. 1(3)1) "without arbitrary distinction relating to skills or position in corporate hierarchies" (Art. 2(3)) and without infringing on national immigration, residence or citizenship laws (Art. 1(4)).¹¹ This proposal not only extended the range of workers falling under the Agreement, but also suggested to "permit firms providing services for which access has been granted under the Framework to recruit personnel from the source, among countries signatory, which is economically most advantageous" (Art. 3(1)), thus introducing free competition over the production factor 'labour'. The result of the GATS was an open compromise reached one year after the conclusion of the Uruguay Round in July 1995. Accordingly, "Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services[...]"¹². This includes both service suppliers who are employed by a foreign or national firm and independent workers. While the Treaty thus adopted the open formulation favoured by the developing countries (irrespective of skills and hierarchical position), the actual scope of liberalisation was however left to the Members' own commitments laid down in the GATS schedules.

This legal framework still determines the multilateral level of commitments in mode 4. In the Doha round, labour mobility continued to be high on developing countries' agenda. In 2008, developing countries again formed a coalition in the WTO submitting a "Plurilateral request on services"¹³ calling for wider

¹⁰ Argentina, Colombia, Cuba, Egypt, India, Mexico, Pakistan, Peru

¹¹ Communication from Argentina, Colombia, Cuba, Egypt, India, Mexico, Pakistan, and Peru: Annex on Temporary Movement of Services Personnel, GATT Document MTN.GNS/W/106 of 18.6.1990.

¹² Para.3 Annex on Movement of Natural Persons Supplying Services under the GATS.

¹³ Requesting Members were Argentina, Brazil, Chile, China, Colombia, Dominican Republic, Egypt, Guatemala, India, Mexico, Morocco, Pakistan, Peru, Thailand and

commitments for Contractual Service Suppliers (CSSs) and Independent Professionals (IPs) – categories de-linked from commercial presence, as well as for the removal of economic needs tests (ENTs).¹⁴ As no progress has been achieved in the Doha negotiations, multilateral commitments on mode 4 are still governed by the 1995 GATS Agreement. Below we review the commitments undertaken by the EU under the multilateral GATS framework.

Table 1. Categories of service suppliers GATS mode 4

| | Highly Skilled | Non-Highly Skilled |
|--------------------------------------|---|--------------------|
| Related to commercial presence | Intra-corporate transferees Business Visitors Traders/Investors | Trainees |
| Independent from commercial presence | Self-employed/independent professional Contractual Service Suppliers (covers highly skilled, but also lower-skilled persons such as technicians, installers, care-workers) | |

Source: OECD 2002, own processing

Scope of commitments under GATS

The actual level of market access for mode 4 reached under the GATS is very limited, following a positive-listing approach¹⁵ and favouring the highly skilled (Dawson 2013). According to an OECD analysis, 240 out of 328 entries relate to executives, managers and specialists, and 135 strictly to ICTs. Yet, only about 17 percent of all horizontal entries cover lower skilled personnel and just a few countries have allowed some forms of restricted entry to "other level" (OECD 2002: 31). Table 1 gives an overview of these categories, differentiating between highly skilled and other persons, and between "mode 3"-related categories and those unlinked from commercial presence. The bold entries

Uruguay, target Members were Australia, Canada, EC, Iceland, Japan, New Zealand, Norway, Switzerland and United States.

¹⁴Economic needs test means that those entering the country must provide evidence that there is 'economic need' for their service, which is not being met from domestic suppliers.

¹⁵Meaning that only those sectors and categories of service providers are actually committed for whom the countries have made concrete entries.

reflect those categories for which the traditional trade hegemons have entered the most commitments.

Although the GATS *Annex on Movement of Natural Persons* states that the treaty shall not impinge on national immigration systems¹⁶ the implementation of commitments in practice has direct implications for national migration laws. Examples include the abolishment of domestic regulations hindering the international mobility of service providers like cumbersome visa requirement procedures; labour market regulations including ENTs, quotas and other restrictions; licensing and qualification requirements; residency requirements and non-eligibility under subsidy schemes; discrimination on mandatory social insurance systems (e.g., denial of pension entitlements); or restrictions affecting the mobility of family members (WTO 1998: 11ff.).

The EU's horizontal commitments under GATS¹⁷ provide for the temporary presence of intra-corporate transferees¹⁸, or natural persons in a senior position, who possess uncommon knowledge essential to the establishment's service, research equipment, techniques, or management. The duration of "temporary stay" is defined by the Member States and, where they exist, Community laws and regulations regarding entry, stay and work, social security measures, minimum wages or collective wage agreements apply. These rather few horizontal openings for mode 4 are further restricted across sectoral commitments that in certain areas discriminate based on nationality or economic needs tests criteria.

In 2005 several WTO members presented revised services offers, and the EU was among those who tabled improved offers for mode 4. However, due to the stalled negotiations at the multilateral level, this has not come into force.

¹⁶ It doesn't "apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis[...]"

¹⁷ WTO GATS EU's Schedule of Specific Commitments GATS/SC/31, April 1994.

¹⁸ An "intra-corporate transferee" is defined as a natural person working within a juridical person, other than a non-profit making organisation, established in the territory of an WTO Member, and being temporarily transferred in the context of the provision of a service through commercial presence in the territory of a Member State. In order to implement its GATS commitments, EU introduced Directive 2014/66/EU of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

Some of the revised provisions were nevertheless taken up in bilateral FTAs signed by the EU. The envisaged horizontal commitments thought to extend mobility rights to graduate trainees (under ICTs or BVs), CSSs and IPs. Although restricted to a few sectors, for short terms, and subject to 'laws, regulations and requirements of the European Communities and Member States'¹⁹, these latter openings would have been the biggest move in favour of developing countries. In the sector-specific commitments, the main limitations were related to residency and nationality requirements, and ENTs.

Overall, it should be noted that mode 4 remains restricted and subject to many domestic regulations. Even in the 2005 EU's revised offer, seen as fairly ambitious, mode 4 commitments relate exclusively to highly skilled individuals and specialists. The possibility to allow market access for the two categories delinked from commercial presence did not move beyond the status quo, as these categories are still supposed to cover only the highly qualified and are subject to various sectoral restrictions.

Despite its limited scope, GATS is the first multilateral treaty to include binding multilateral rules on migration. Although the treaty allows for a great degree of flexibility, it also has direct implications for national immigration systems and labour market regulations, especially since these commitments cannot be unilaterally reversed once they have been adopted. Assessing both developed and developing countries' WTO commitments on mode 4, it is to be noted that mobility provisions at the multilateral level remain limited. But the WTO iterative rounds of negotiations have created an advantageous momentum for norm expansion outside GATS in regional and bilateral trade agreements. The developments are reviewed in the next section.

Labour mobility in plurilateral and bilateral preferential trade agreements

While progress in the WTO has been stalled, the mobility of persons is now firmly anchored as part of the liberalisation agenda in trade in services and

¹⁹ These requirements relate to education (university degree or technical qualifications requirements and professional experience for several years) and numerical ceilings (EC Communication S/C/W/273, October 2006, available at: http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc_150087.pdf, last accessed 21 October 2014).

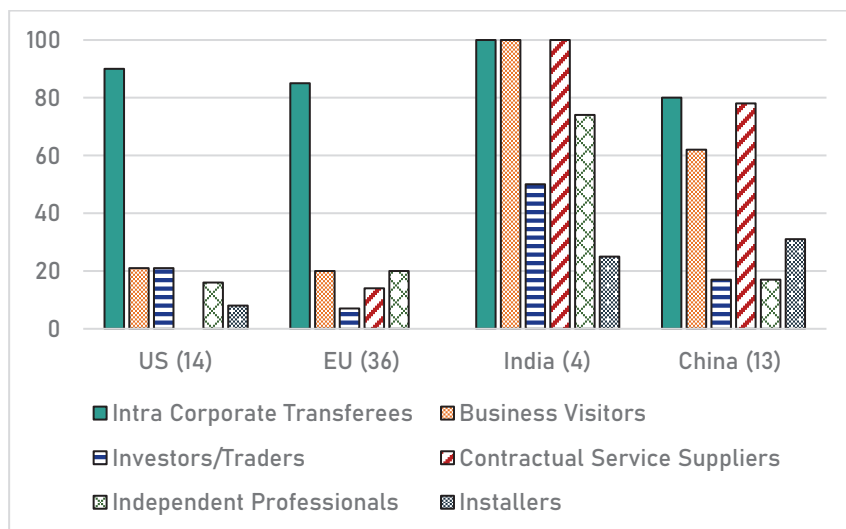
thus figures both in initiatives aiming at a plurilateral agreement (the Trade in Services Agreement (TiSA)) and in bilateral PTA negotiations.

Representatives of initially 16 industrialized and advanced developing countries have decided to move forward the trade agenda in services and develop a plurilateral forum that would follow closely the GATS provisions but operate outside the WTO (Hufbauer et al. 2012). Official negotiations for TiSA were launched in 2013. So far, position papers tabled by the EU and other participating countries essentially focus on "mode 3"-mobility, ICTs and highly skilled professionals, categories traditionally supported by the industrialized countries, yet with some commitments exceeding those existing in the GATS. The negotiation of a plurilateral agreement outside the WTO has faced opposition by developing and emerging economies, and trade ministers from Brazil, India, and South Africa have ardently argued that such a plurilateral approach would "go against fundamental principles of transparency, inclusiveness and multilateralism" (Hufbauer et al. 2012: 2). If concluded, TiSA may thus further promote the mobility of service providers if so, will have an effect on future multilateral negotiations. Meanwhile, more developments have occurred in bilateral PTAs.

The proliferation of bilateral PTAs has gone along with a widening scope of mode 4 commitments. The EU has expanded its commitments, in particular in the Economic Partnership Agreement EPA with the Cariforum countries and in recent agreements with Canada (CETA) and Japan. A look at trade agreements concluded by emerging countries and in particular China and India shows that these countries have gone beyond what the EU has hitherto been willing to negotiate. While commitments only apply to the parties to the agreements, one can say that bilateral PTAs do establish a standard against which future trade agreements will be measured. Therefore, it is worthwhile to assess the level of EU liberalisation against that achieved by other major economic powers.

Below, Figure 1 and Table 2 compare the commitments undergone by the US, the EU, China and India in bilateral PTAs which include chapters on services. The columns indicate what percentage of a country's total number of PTAs covering services include commitments on the different categories of service providers.

Figure 1 Frequency of Labour Mobility Provisions in Preferential Trade Agreements 2019



Source: Lavenex and Jurje 2019. Numbers in brackets indicate a country's total number of PTAs covering trade in services.

At a first glance, Figure 1 shows that the emerging economies systematically include provisions on "mode 4" in their PTAs, whereas the EU and US have inserted commitments only selectively. Second, agreements concluded by China and India are broader in scope when it comes to the categories of service-providers, particularly in categories de-linked from commercial presence ("mode 3", see above). The analysis of the scope of commitments for the different categories of persons under these agreements corroborates the prevalence of GATS "mode 4+" commitments in emerging countries' PTAs (see Table 2).

Table 2. Scope of Labour Mobility Commitments in Preferential Trade Agreements

| Categories | US | EU | India | China |
|--------------------------------------|--|--|---|--|
| ICTs | 3 up to 5 years; no ENTs | Managers, specialists: up to 3/5 years Graduate trainees: 1 year ENT/num. quotas abolished, unless otherwise specified | 1 up to 5 years (10 years in the FTA with Malaysia) | Up to 3 years |
| BVs | Up to 90 days | Up to 90 days in any 12-month period | Up to 90 days (may be extended/multiple entry visa) | Up to 6 months |
| Traders/Investors | Temporary entry | Up to 90 days in any 12 months | 90 days (may be extended/multiple entry visa) | 90 days |
| CSSs | | Up to 6 months, in any 12-month period (up to 3 years with professional experience in the CARIFORUM-EPA) Numerical ceiling and ENTs apply | Up to 1 year (3 years in the FTA with Japan) | Up to 1 year (4 years in ChAFTA) |
| IPs | Temporary entry | Up to 6 months, in any 12 months; ENTs apply | Up to 1 year (3 years in the FTA with Japan) | |
| Installer | | | 3 months (may be extended) | 3 months (subject to the duration of the contract) |
| Recognition of qualifications | "develop mutually acceptable standards and criteria" for recognition | Qualifications/professional experience may be required | "appropriate educational and professional qualifications"; sometimes work experience required | Education/experience may be recognised |
| Social rights | No | No (in other trade-related agreements yes, but not in the PTAs) | Entry and stay for spouses/dependents | Entry and stay for spouses/dependents |
| Numerical quotas | Yes, for certain categories | Yes, for certain categories | No | No |

Source: Lavenex and Jurje 2019.

To summarise, Table 2 shows that emerging countries' PTAs cover broader categories of service providers, especially regarding the two categories delinked from "mode 3" and allow for longer periods of stay. Subcategories such as nurses, care workers, language teachers, yoga or arts instructors (in India-Japan PTA), chefs, martial arts, or Mandarin teachers (in China-New Zealand and China-Australia PTAs), represent a great achievement for mobility of CSSs and IPs at all skill levels. Japan has even created a special residence status called "instructor" for Indian service suppliers involved in teaching Yoga, Indian cuisine, Indian classical music and dance, and the English language, with a duration of stay for up to 3 years. Furthermore, social and employment rights for spouses and dependents have been introduced in

the India-Japan PTA and the China-Australia PTA (ChAFTA). This represents another major deepening of "mode 4" commitments that clearly crosses over to immigration policy.

The bilateral agreements concluded by the US are a salient example of the delicate balance of negotiating mobility rights within a trade context and the prerogatives of ownership over the immigration agenda defended by the political actors responsible for migration policy. The US has concluded FTAs²⁰ with 20 countries (including NAFTA), following in all but one case (FTA with Jordan from 2001) a negative-listing approach to scheduling commitments in services. This translates into a generalised liberalisation of sectors, unless otherwise indicated in specific reservation lists. The concessions offered by the US essentially follow the GATS model, mode 4 being covered under the so-called 'professional services' that requires specialised, post-secondary education, or equivalent training/experience. Two agreements (with Chile and Singapore signed in 2004) stand out for providing quotas on entry visas for professionals (1,400 visas for Chilean professionals and 4,500 for Singaporeans granted annually). This link to visa liberalisation created great controversies in the Congress, which stated that it was beyond the authority of trade officials to negotiate visa concessions. The final outcome was to place these visas under the category of H-1B program and count them under the overall visas cap. The US Trade Representative has subsequently been blocked by the Congress in making additional visa concessions under mode 4, thereby pointing at the sensitive limits of the trade-migration nexus.

These limits are also salient in the EU negotiation context. As one of the officials from the Commission's Directorate General (DG) on Trade put it "mode 4 is strictly about trade and not about immigration"; "there is no interference into each other's domain" (Interview DG Trade, 17.9.2012). However, the overlaps between both agendas are becoming increasingly obvious. In the words of another EU expert from DG Home this is highlighted as follows: "trade people want to use visas as leverage for trade agreements" while "home affairs officials want to use visas as leverage for readmission agreements" (Interview DG Home, 18.9.2012).

²⁰ US-Israel, US-Canada-Mexico, US-Jordan, US-Australia, US-Chile, US-Singapore, US-Bahrain, US-Morocco, US-Oman, US-Peru, US-Dominican Republic, US-Panama, US-Colombia, US-South Korea.

The EU has been quite hesitant to move beyond GATS commitments in most bilateral agreements. From a total of more than 65 trade-related agreements concluded by the EU, only about 50 percent include services provisions relevant for mobility. These are generally the newer agreements concluded from mid-2000 onwards. Most of these provisions are linked to commercial presence, covering ICTs or in the EU terminology “key personnel” (present in almost 70 percent of those agreements) and self-employed persons within the companies established by these nationals in the territories of the EU. There are a few exceptions that also give rights to service suppliers de-linked from commercial presence. One is the EPA concluded with the distant Cariforum countries. The significance of these commitments is however contested, as preference for EU workers through economic needs tests is maintained. Nevertheless, as Dawson (2013: 15) points out, in contrast to the EU GATS quite ambiguous offer, the EPA provides straightforward requirements for certification and has a broader sectoral coverage. A particularly high level of commitments is also included in the comprehensive economic partnership agreement with Canada, CETA (2017). On the one hand commitments provide for significantly longer periods of stay for ICT (on top of the usual 3 years 18 months), including rights for spouses and dependents; CSS (12 months instead of 3 months); and IPs (12 months). On the other hand, CETA includes detailed provisions on regulatory cooperation towards Mutual Recognition Agreements concerning professional qualifications in Chapter 11, which may result in the effective reduction of regulatory barriers to mobility. By comparison, very far-reaching commitments have also been discussed in the context of the PTA negotiations with India which started in 2007 and have been stalled since 2013. In these negotiations, service-trade related mobility has become one of the main issues and a potential stumbling block. It appears that fulfilment of India's requests on mode 4 would not only exceed existing commitments under other trade agreements, it would also require the widening of EU competences to negotiate immigration commitments which so far still reside with the member states. Nevertheless, one can arguably assume that the ICT Directive adopted by the EU in 2014 (which facilitates the intake and internal mobility of third country ICTs in the EU) does contribute to the EU's negotiation position in PTAs.

The importance of EU commitments in PTAs and the potential evolution of the services-related labour mobility agenda cannot be assessed on the basis of EU and US commitments alone. It is important to acknowledge the rise of

emerging countries and the effective widening of mode 4 standards that has occurred in emerging countries' PTAs. India has negotiated important provisions with countries such as South Korea and Japan and has presented far-reaching demands in the (now stalled) negotiations with the EU. China's PTAs stand out because they codify far-reaching commitments by Western countries which were hitherto opposed to such openings, Australia, New Zealand and Switzerland.²¹ ChAFTA is the most encompassing agreement. Thereunder Australia has – on top of the points above – agreed on "guaranteed access" for a quota of up to 1,800 CSS annually in certain occupations along with up to 5,000 visas granted annually under a separate but connected Work and Holiday Arrangement. In addition, the two countries commit on regulatory cooperation to ensure smooth implementation of the provisions including expeditious and transparent visa and immigration procedures and cooperation on mutual skill recognition. At the fringes of ChAFTA, moreover, a Memorandum of Understanding allowing for Investment Facilitation Arrangements (IFA) gives Chinese owned companies registered in Australia undertaking large infrastructure development projects the possibility to negotiate increased labour flexibilities. In practice, Chinese companies registered in Australia are allowed to import Chinese workers (all skill levels) for the duration of the projects, as long as the capital expenditure exceeds USD 150 million. These agreements also include additional regulatory innovations that sustain the enforcement of commitments such as "guaranteed access" for a given number of CSS and working holiday makers; commitment to expeditious and transparent immigration procedures; cooperation on mutual skill recognition; relatively open mobility commitments for investments under the IFA; and the possibility to negotiate labour flexibilities. These provisions on labour mobility are all the more interesting since they are generally discussed as the main concessions granted to China under ChAFTA which otherwise privileges Australian exports – even if the volume of visas guaranteed remains limited. It is also worth noting that Chinese commitments under ChAFTA towards Australian workers are much more limited than Australia's concessions to Chinese workers.

²¹ The case of Japan is particular because inserting these clauses in the PTA with India has been interpreted as a means to satisfy a demand for foreign labour, in particular for health care by circumventing restrictive immigration laws (see Ford and Kawashima 2016).

From a sceptical point of view, one may invoke that these "mode 4+" rules are of limited importance given that they affect only a very small fraction of overall labour migration flows. However, their regulatory implications are significant. First, access to state territory and the right to work are key prerogatives of the state, and apart from regional free movement regimes and the GATS, no international treaty concedes such rights to migrants (Trachtman 2009; Lahav & Lavenex 2012). Second, the traditional instruments for labour mobility cooperation – bilateral Memoranda of Understanding – are legally non-binding. Mobility rights in PTAs in contrast are binding and enforceable obligations, which cannot be reversed unilaterally by domestic legislation. Even if they don't necessitate domestic legislative changes at the time of adoption, these commitments "lock in" provisions that cannot be unilaterally reversed ex-post (Ekman & Engblom 2019: 198, see also Tans 2015). In addition, wider provisions conceded to one partner raise the standard for future PTAs, which is sustained by the Most Favoured Nation principle enshrined in trade law. Finally, these perhaps limited advancements in trade agreements have implications for international cooperation on migration, and have been acknowledge in the Global Compact in Safe, Regular and Orderly Migration adopted by the UN member states in December 2018.²² This is all the more so, as various regional integration projects around the globe have developed free movement agendas in relation with trade liberalisation (see Lavenex and Jurje 2019).²³

Summary

With the proliferation of regional economic integration and service industries, trade integration now also covers labour mobility. Whereas in multilateral negotiations, OECD countries have kept low profile, basically limiting their commitments to the mobility of ICT working within multinational enterprises, developing and emerging countries have effectively widened the scope of GATS "mode 4" liberalisation to other categories of workers and have expanded the range of migration policy commitments in bilateral and

²² See Objectives 2d) and 18c) of the Global Compact, online at https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf.

²³ The African Union and in particular most of its Regional Economic Communities, the Association of South East Asian Nations ASEAN, the South American Mercado del Sur MERCOSUR and the North American Free Trade Association (NAFTA, now US-Mexico-Canada Agreement USMCA) all include a mobility agenda based on trade liberalisation.

plurilateral PTAs. As our interviews with representatives of (EU) trade and migration departments show, the sensitivity of the trade-migration policy linkage has been recognised, and negotiators have been keen to underline the separate character of temporary mobility which is deemed necessary to conduct trade in services from national immigration systems. However, it cannot be denied that commitments to admit foreign workers, investors, managers or executives for up to several years do qualify as international labour migration and have implications for national immigration systems. As the case of India shows, the EU is confronted with ambitious demands for stronger "mode 4" liberalisation in bilateral trade negotiations, and associated EU neighbourhood countries such as Morocco and Tunisia have also pointed at the potential for legal migration pathways under this agenda.

According to our research, however, the EU has so far not established a strategic linkage between legal mobility opportunities within trade in services and its external migration policies towards third countries. To our knowledge, no country of the European Neighbourhood Policy or any other priority country in the fight against irregular migration has been offered mode 4-related concessions in exchange for cooperation in migration control or readmission. Rather, such commitments have been negotiated separately under other chapters of the respective association and cooperation agreements. Therefore, we conclude for this configuration of the trade-migration policy nexus that the linkage between the two policy areas is only partially developed and that EU trade and external migration policies coexist in an only loosely coordinated and at times also contradictory manner.

The next chapter moves to the latest configuration of the trade-migration policy nexus and examines the use of EU trade policy instruments in relation to refugee insurgencies. In order to gain a deeper understanding of the context in which and the manner of how trade instruments enter into refugee policies we conducted in-depth case studies on the compacts concluded with Lebanon and Jordan.

4. The Trade-Migration Nexus in Refugee Policy

In this chapter, we explore the most recent manifestation of the trade-migration policy nexus in EU external relations, which means negotiating trade concessions as an avenue to incite and support first countries of asylum in the hosting and protection of refugee populations. More specifically, we examine how the EU has sought to deploy trade instruments as ‘carrots’ to enhance refugee cooperation with refugee hosting states in the context of widespread Syrian displacement. To that end, we draw on the two case studies of the implementation of the so-called Lebanon and Jordan “Compacts” concluded in the context of the London Conference for Supporting Syria and the Region in 2016. We focus on the interdependencies between trade concessions, development aid, refugee employment and protection. In doing so, we seek to generate insights to the following questions:

1. How has the EU synchronised the nexus between trade and refugee issues in its external migration policy?
2. What context-specific conditions have shaped the outcomes of the EU's approach?
3. What policy recommendations can we draw from these experiences?

In our analysis, we argue that the EU has sought to leverage trade as a positive incentive in its cooperation over displacement with both Lebanon and Jordan. Yet, the EU's trade policies in the context of the “compact” have only been partially coordinated with local policies and protection mechanisms. They have also been detached from the dynamics of labour regimes and historical legacies. This has led to an aborted implementation of the compact in the case of Lebanon and to mixed results in the case of Jordan.

In Lebanon, we show that the compact remained a “hollowed out” instrument. On the one hand, the small polity's endemic challenges, its political divisions and, more recently, its financial crash in the context of unprecedented mass protests against the political system have derailed the path of the compact and its declaratory objectives. On the other hand, there has been a

conspicuous disconnect between the compact as *a policy template* and Lebanon's *socio-political realities* and local policy-makers' expectations and perceptions from the outset. Though negotiations on the nexus between trade and refugee employment have taken place, the Lebanese government has refused to integrate explicit linkages between trade and refugee employment in the compact.

In the case of Jordan, trade policy instruments have strengthened cooperation on refugee inclusion between the EU and the Jordanian government. At the same time, the compact has remained disconnected from a coherent refugee protection mechanism, and from an understanding of Jordan's labour regime. As a result, the proclaimed objective of issuing 200,000 work permits to Syrians turned out to be an overly complex issue (Tsourapas 2019a) that collided with historical legacies, informal labour norms, stagnated asylum and labour policies, and most importantly refugee preferences.

The two cases provide important insights in **the scope and conditions** affecting the implementation of the trade-migration nexus in migration/refugee governance. Their analysis responds to the need to explain variation in the way neighbouring governments have responded to the EU's attempt to link trade with development on the one hand, and with the governance of displacement on the other. More generally this approach geared at exploiting variation in host countries' responses to the compact seeks to unpack under what conditions the EU's use of trade policy instruments in the context of mass refugee influx may yield success or not. It also seeks to map what key contextual factors shape the effectiveness of such an approach and its suitability to grand challenges such as forced displacement. We conclude that the EU needs to coordinate its approach of trade-for-refugee inclusion with a careful assessment of socio-cultural realities and local legacies. It also needs to weigh in the geopolitical risks of drawing on trade in refugee protracted situations. We also show that in context of asymmetrical trade flows, beneficiary states are unable to leverage the "positive incentives" that the EU can potentially offer. At the same time, we conclude that, in the shadow of the EU's path dependency on the "security-stability" nexus (Roccu & Voltolini 2017), the attempt to deploy trade instruments that seek to retain refugees in their first countries of asylum leads to confusing outcomes that undermine both the EU's approach and refugee rights. The EU's compacts seek to enhance the resilience of both refugees and host communities in the face of adversities. At

the same time, they aim to ensure that displaced people stay in the region of origin, and that refugee-hosting states are involved in containing refugees where they are (Fakhoury 2019a). These measures can be interpreted as the latest stage in the evolution of EU external migration policies which range from limiting access to EU asylum systems to controlling migration routes and, more recently, to discouraging the departure of potential asylum seekers and refugees (Lavenex 2019). Against this background, the EU's ability to induce protection through external action is substantially weakened (Lauten & Nelson-Pollard 2017). These findings have broader implications for the EU's intersectoral policy approach that links development, migration management, and trade in its external policy. As the sections below show, policy instruments based on consolidating interrelationships between trade and the search for refugee solutions generate tensions and forms of inequity in the first countries of asylum. They also yield various consequences that undermine refugee protection.

4.1 Reading the 2016 compacts: the EU's external refugee approach in the wake of Syrian displacement

But as long as the vast majority of refugees remained in a handful of so-called haven countries [...] there was little pressure for new thinking. It was only the scale of the Syrian refugee crisis and its perceived threat to Europe's status quo that began to change this. (Howden et al. 2017)

The Arab upheavals and Syria's conflict, which led to mass displacement into Syria's neighbouring countries and further afield, have prompted the EU to rethink its partnership priorities with the Middle East and North African Region (European Commission 2015a; Fakhoury 2020b). Within this climate, the EU has shifted its focus from an engagement with "deepening democracy" to a politics of "principled pragmatism" which prioritizes stabilisation and security (Fakhoury 2020b; Juncos 2017). In 2015, the EU changed its Neighbourhood policy with neighbouring states, calling for an approach that relies on tailor-made engagement (European Commission 2015a). The revised policy addresses stabilization as a core policy priority of the EU's external action (Fakhoury 2017a).

With the arrival of more than one million Syrians to Europe, internal rifts among the EU member states in the context of refugee sharing, resettlement and relocation have furthermore added heavy strains on the EU's asylum policy. Notwithstanding this, the EU has embarked on a pro-active agenda of external migration governance (Collett & Le Coz 2018; Fakhoury 2019a). It adopted the 2015 European Agenda of Migration, which highlights the importance of increased cooperation with third countries and emphasizes the EU's role in supporting "the countries bearing the brunt of displaced refugees" (European Commission 2015b). At the same time, the Agenda stresses the importance of designing more effective border management policies and a more cohesive EU asylum policy (European Commission 2015b).

In 2016, as underscored, the EU established a new partnership framework with third countries on migration (European Commission 2016a and 2016b). The partnership seeks to consolidate the EU's cooperation on migration with partnering governments while enhancing the Union's capacity to respond to crises and manage its borders (European Commission 2016a). To that end, the partnership foresees the negotiation of innovative funding instruments that would design "comprehensive partnerships" on migration with third countries. Framed as the compacts, these instruments have three core characteristics. First, they aim to strengthen linkages between the EU's policies on migration, trade, stabilisation, and development (European Commission 2016). The aim is to leverage the EU's policies in sectors such as development and trade as "positive incentives" in migration management. Through the compacts, the EU aspires to reward countries that cooperate on migration and on providing refuge to displaced people (European Commission 2016a: 7). Second, the EU seeks through the adoption of the compacts to strengthen the capacity of local refugee protection regimes. Compacts provide incentives such as capacity building and trade facilitation schemes that would lure refugee hosting states to improve the integration of refugees in their societies and labour markets. Third, these tools aim at fostering the resilience and "self-reliance" of displaced populations "as close as possible to refugees' country of origin" (European Commission 2016a: 3; European Commission 2016b; European Commission 2017c). In other words, they ensure that the EU can offer prospects to refugees close to countries of origin and from a distance (Al-Khalidi 2016). Seen from this perspective, the compacts leverage the EU's external action as a pathway for addressing its own migration-related challenges.

The EU signed the first compacts with Lebanon and Jordan (Buffoni 2018; Howden et al. 2017), two key refugee hosting states in which displaced Syrians constitute more than a quarter of their total population by now. Negotiated in the context of the *2016 Supporting Syria and the Region Conference* in London, the compacts enshrine mutual commitments between the EU and the respective governments with a view to strengthening the two states' capacity to deal with displacement while fostering the resilience of both refugee and host communities. Both compacts develop "comprehensive partnerships" that aim at combining "policy elements towards the same objective" (European Commission 2016a: 8). Departing from the idea that the governance of refugee livelihoods can spur a myriad of benefits for refugee hosting states, compacts spell out incentives for individual countries to ease Syrian refugee access to jobs and residency. In exchange, host countries would benefit from a variety of opportunities such as trade, capacity development, security sector reform, concessional loans, and job growth (Huang & Ash 2018).

In the case of Lebanon, the compact made 400 million euros available for the years 2016 and 2017, and committed additional funding until 2020 to various projects in the areas of Growth and Job, Governance and Rule of Law, Regional Stability, Security and Countering Terrorism (European Council 2016; European Commission 2017a). Addressing Lebanon's context-based challenges, it caters to policy areas related to waste management, water, education, and health. It also injects funding in policy areas that have thus far remained highly immune to policy change such as women's participation in elections (Fakhoury 2019a: 10). It moreover foresees financial instruments for increasing economic opportunities and jobs for both Syrian refugees and vulnerable Lebanese. In exchange, the Lebanese government is set to facilitate the social and economic integration of Syrians (European Commission 2016a: 13). Funding is also dedicated to the provision of legal services to vulnerable individuals, and to creating legal aid offices in the North of Lebanon and in the capital of Beirut (Fakhoury 2019a). In the context of these financial arrangements, the compact calls on the Lebanese government to facilitate temporary legal residence and access to employment for Syrian refugees (European Union 2016).

In Jordan, the compact relaxes trade regulations between Jordan and the EU with a view to increasing exports from 18 designated Special Economic Zones (SEZs) (European Commission 2018). In return, Jordan is to provide

employment quotas and work permits for Syrian refugees (Lenner & Turner 2018). Whenever “the target of 200,000 jobs is achieved”, the anticipated ten-year relaxation period of EU rules of origin for products from the 18 economic zones may be extended (Lenner & Turner 2018). The compact additionally allocates funding to projects related to social inclusion, livelihoods support and development as well as justice and political reforms (Fakhoury 2019a). It also channels funding to both host and refugee populations’ access to education. Moreover, it devises mechanisms to support civil society and electoral reform (European Commission 2017b). In December 2018, in the wake of negotiations between the EU and the Hashemite Kingdom of Jordan, the compact was reviewed to reflect current realities. According to the 2018 review, 60,000 “active” work permits are needed before the compact can be applied to the whole country and not only to the Special Economic Zones (Al Daaja 2019)

To gain deeper insights into the impact of the compacts, it is important to place these instruments in the context of the partnership that the EU has developed with both countries in the framework of the European Neighbourhood Policy (ENP), and more recently in the context of Syrian displacement. Back in 2002, the EU and Lebanon signed an Association Agreement, which entered into force four years later (European Commission 2019a). Still, notwithstanding an enhanced partnership, Lebanon’s political divisions and the gap between EU policy intent and practice have weakened the effectiveness of the bilateral partnership (Seeberg 2009; Fakhoury 2017a). Jordan’s partnership with the EU benefits from an “advanced status” (Fakhoury 2019a). The Hashemite Kingdom’s Association Agreement which entered into force in 2002 paved the way for a Free Trade Area between the EU and Jordan (European Commission 2019b). In 2010, negotiations between Jordan and the EU led to a new action plan, conferring to Jordan an advanced ENP status when it comes to cooperation on peace, stability, and prosperity.²⁴ Jordan’s historical reliance on external aid to extract revenue has ensured that its bilateral partnership with the EU evolves into a strategic priority for the Kingdom. In addition, in contrast to Lebanon’s deeply divided political factions, Jordan has a more

²⁴ See EU-Jordan ENP action plan https://eeas.europa.eu/archives/delegations/jordan/documents/eu_jordan/jordan_enp_ap_final_en.pdf

cohesive governmental apparatus, which makes policy interactions with the EU smoother.

In the context of displacement from Syria, the EU has designated Lebanon and Jordan as priority countries, allocating (including the compacts) more than €1 billion to help both countries deal with the refugee challenge (European Commission 2018; Fakhoury 2019a). The EU has also ensured that its refugee aid instruments are in line with both governments' national response plans to the refugee challenge namely the Lebanese Crisis Response Plan (LCRP) and the Jordan Response Platform for the Syria Crisis (The United Nations and the Government of Lebanon 2018). In both cases, the EU coordinates with government agencies and civil society actors to implement projects that benefit both refugee and host populations (European Union 2016; Hashemite Kingdom of Jordan Ministry of Planning and International Cooperation 2016, 40). Since the onset of the crisis, the EU has upscaled its "refugee diplomacy" or the intensity and frequency of its activities and meetings with both governments on the refugee challenge (Fakhoury 2020b). In Lebanon, in several of its meetings with the government, the EU has expanded on several support mechanisms that the small state can harness in the context of the refugee challenge. Examples include job growth, facilitation of Lebanon's trade with EU markets and financial aid in security sector reform (European Council 2017; Fakhoury 2020b). In the case of Jordan, EU and Jordanian officials have significantly consolidated their partnership on migration and security. In 2014, they signed a Mobility Partnership, promoting information exchange on legal migration channels between the EU and Jordan, and strengthening cooperation on development and readmission of irregular migrants (European Commission 2014).

At first glance, the compacts seem to be highly desirable instruments in the context of the EU's longstanding partnership with both governments and its upscaled cooperation on the refugee issue since 2012. As the compacts' architects have initially hoped for, these instruments would potentially turn the refugee challenge into an opportunity for both host and refugee populations (Barbelet et al. 2018a). Still, in practice, the compacts have provoked polarising debates with regards to their negotiation and implementation (Gordon 2019; Morris 2020). Practitioners and scholars have been particularly interested in researching whether and if so, how the compacts' templates resonate with countries' local conditions, and refugees'

preferences (Buffoni 2018). Some studies see benefits in the compact's approach with regards to boosting refugee access to employment and education, especially in Jordan (Barbelet et al. 2018a & b; Huang & Ash 2018). At the same time, other studies are critical of the compact's use of trade "as migration policy" (Gordon 2019) and as an instrument to bolster refugee employment (Panizzon 2018). According to these voices, the compacts' substantial pitfall lies in their inability to provide protection (Gordon 2018). This leads to what Gerasimos Tsourapas frames as "refugee commodification" (Tsourapas 2019a) and to a model of bilateral cooperation reinforcing the rise of "refugee rentier states" (Tsourapas 2019b). In the sections below, we analyse how the compacts have been respectively implemented in Lebanon and Jordan. In our analysis, we dedicate special attention to Lebanon's and Jordan's response to the refugee challenge while contextualizing the compact's negotiation and implementation in their respective socio-political settings and in the broader geopolitics of refugee governance. We also place special emphasis on the conditions under which the EU has sought to capitalize on the "Trade-for-Refugee Employment" in both Lebanon and Jordan, and how successful this approach has been (Panizzon 2018). We then exploit differences and commonalities in Jordan's and Lebanon's response to the compacts to explain the extent to which the compacts' objective to draw on trade and development aid to encourage the integration of refugees has yielded success or not. Here we target the compacts' appropriateness to the refugee challenge and, more specifically, the extent to which their so-called "tailormade engagement" has reflected the host state's contextual challenges. We further probe into some tensions and forms of inequity that the compacts have generated on-the-ground and identify some consequences they have had for the host states, the refugees as *actors in their own right*, and for the EU itself. Again, as underscored in our section on methods and sources in chapter 2, our aim is not to compare and contrast Lebanon and Jordan in the ways they have dealt with the refugee challenge. Rather we aim to identify how overarching conditions in both countries – namely political stability of the host governments, degree of coherence in their asylum policy, their readiness to negotiate trade agreements with the EU in the context of forced displacement, the degree of inclusion of Syrian refugees in the respective countries, the impact of Syria's neighbouring war on the governments' perceptions of the EU's policy tools, and the existing trade relationship between the EU and the

refugee hosting state – have shaped the compacts and their effectiveness (see tables 3 and 4 in this chapter).

4.2 The EU-Lebanon Compact as a “dead letter”

The EU-Lebanon Compact saw the light in an international context which sought to create a new architecture on the nexus between refugee aid and development (UNHCR 2016). Its adoption happened at a time when Lebanon was promised large-scale concessional grants and loans to address its endemic challenges in the context of the refugee challenge (Howden et al. 2017). In reality, the Lebanon Compact was born in an unfavourable domestic policy constellation and in a context where ongoing EU-Lebanese negotiations on establishing formal linkages between trade and refugee employment have not been fruitful. Indeed, as Howden et al. (2017) note, “after the adoption of the Jordan Compact, a Lebanon Compact worth about 470 million US dollar in E.U. aid, was later agreed to with considerably less fanfare and much vaguer terms” (Howden et al. 2017).

To understand why the Lebanon Compact has remained a “declaration of intent”,²⁵ we begin by looking at the contextual mismatch between the compact’s logic and socio-political realities of Lebanon in the context of the refugee challenge. Then, we explore why negotiations between the EU and Lebanon on articulating a “trade-for-refugee employment” nexus have not materialized, making the Lebanon Compact a vague document (Howden et al. 2017; Temprano Arroyo 2017) of little traction for refugee rights (Fakhoury 2019a). In this specific instance, we explore technical, as well as geopolitical, challenges that have impacted the policy constellation undergirding the compact’s adoption and implementation.

The mismatch between the compact’s approach to refugee integration and Lebanon’s politics of refugee reception

In the context of Syria’s neighbouring war, Lebanon, a small albeit multi-sectarian state with a complex political system built around a so-called sectarian model of power-sharing, has hosted more than one million Syrian refugees. This has made it the country with the highest refugee per capita in

²⁵ Interview with ILO representative, Beirut, 23.1.2019.

the world. Although Lebanon has not signed the 1951 Convention, it has entrusted refugee determination status to the UNHCR in the light of a Memorandum of Understanding (MoU) signed in 2003. In recent years, however, this MoU has become increasingly ineffectual and obsolete. At the outset of the conflict (2011-2014), the Lebanese government adopted an open-border policy. Soon, however, this policy gave way to a securitized politics of refugee containment. In 2015, Lebanon closed its borders and asked the UN Refugee Agency to stop registering refugees. By 2018, the Lebanese government had started promoting policies that have significantly restricted Syrians' access to employment, housing, and residency (Hall 2019). In parallel, key political executives have scaled up calls for refugee repatriation. Some have even called on international actors including the EU to divert funds from Lebanon to Syria in the hope of incentivizing refugees to go home (Fakhoury 2020a). In coordination with Syrian authorities, the Lebanese government has moreover been processing applications for return (Fakhoury & Ozkul 2019)

Against this background, the compact, which seeks to provide Lebanon with positive incentives for refugee inclusion, has been gradually "overshadowed" by Lebanon's shifting policy imperatives and circumstances (Fakhoury 2019a, 11; Huang & Ash 2018). As soon as it was adopted, the government proclaimed its intent to push for repatriation as the desired policy (Mourad 2017; Fakhoury 2020a). In the wake of the compact's adoption, the Government of Lebanon (GoL) pledged to deliver on some policy reforms that would improve the integration of Syrian refugee stay. In the spring of 2017, it announced its decision to waive the 200 US dollar refugee residency fee enabling Syrian refugees to renew their legal stay. It also adopted measures allowing Syrian parents to register the birth of their children born in Lebanon (European Council 2018; Fakhoury 2019a). Furthermore, it pledged to simplify refugee documentation requirements, and to facilitate their access to work in limited sectors namely environment, agriculture, and construction. To that end, the government replaced the "pledge not to work" with a pledge to abide by Lebanese laws. One year later, in the framework of the 2017 Brussels Conference, Lebanon reaffirmed its commitments to facilitating refugee inclusion, and restated its intent to optimize the refugee registration process such as removing daily limits imposed on the processing of applications (European Council 2018). In reality, measuring whether these commitments

have materialized has turned out to be an impossible task.²⁶ Human rights organisations have decried the erratic and selective application of refugee registration procedures and of the fee waiver policy (Fakhoury 2019a: 11; Human Rights Watch 2017 and 2018; Marsi 2017). In 2017, the UNHCR said that only 20 percent of people were able to extend their residency without paying fees (Howden et al. 2017). In its 2018 Vulnerability Assessment of Syrian Refugees in Lebanon (VASR), the UNHCR reports that more than 70 percent of surveyed Syrians above 15 did not have legal status (UNHCR 2018a). Though Lebanese officials announced in 2016 that Syrians were able to apply for work permits in three sectors (agriculture, construction, and environment), it is reported that only 200 new work permits for Syrians were issued that year. Lebanon's pledge at the London Conference to create "350,000 jobs in five years, 60 percent of them for Syrians" turned out to be merely "aspirational" (Howden et al. 2017). Indeed, four years after the compact's adoption, one of the factors behind Lebanon's monetary and economic collapse has been attributed to its dwindling job prospects.

Unachieved policy commitments and goals can be attributed to multiple causes. The Lebanese government has attributed such unmet goals to Lebanon's overstretched administrative, limited labour market capacities and to the fact that Syrians have already been integrated as labour migrants in Lebanon's informal employment sector since the end of Lebanon's war in 1990.²⁷ Practitioners and academics have referred to Lebanon's endemic governance challenges²⁸ (Huang & Ash 2018) and to the government's intent to maintain legal ambiguity as the key modality for refugee governance.²⁹

Aside from the disconnect between the compact's objectives and Lebanon's shifting refugee policies, the compact remained largely disconnected from an understanding of Lebanon's intricate policy legacies and polarized perceptions over the Syrian conflict and its spillovers. Displacement from Syria has not left Lebanon's complex landscape of sectarian politics unscathed. Throughout the eight years of turmoil in neighbouring Syria, societal and political tensions

²⁶ Informal conversations with Lebanese scholars and Civil Society Activists, Beirut, 2019

²⁷ Interview with Lebanese official, Ministry of Foreign Affairs and Emigration, Beirut, 21.2. 2019.

²⁸ Interview with EU officials, Beirut, 18.1.2019.

²⁹ Interview with Lama Mourad, Toronto, 5.8.2019

have been on the rise. The small state has been unable to develop a unified policy stance towards Syria's war or towards the refugee issue. In the past four decades, the Syrian regime's intervention in Lebanese affairs since 1976 has evolved into one of the most polarizing cleavages in the domestic arena. In the context of Syria's war, some Lebanese factions have backed the Syrian regime in the face of its rivals. Others have viewed the conflict as an opportunity to weaken Syria's grip on Lebanon (Fakhoury 2020a). Amid domestic tensions, most political factions have started portraying the extended stay of Syrian refugees, who are mostly Sunni, as a threat to Lebanon's system of power-sharing which revolves around a fragile demographic equilibrium between Muslims and Christians. In a context of deepening domestic tensions over the refugee issue, the Lebanese government has moreover sought to evade international pressure when it comes to improving refugee protection mechanisms (Mourad 2017; Fakhoury 2020a; Fakhoury 2021). At this juncture, key political executives have insisted on framing refugees as temporarily displaced individuals. In that regard, they have emphasized that return or resettlement to a third country is the only durable solution. Furthermore, the issue of Syrian refugee stay and return has become an integral part of Lebanese politicians' geopolitical interests. Some political executives who are staunch allies of the Bashar al-Assad regime in Syria hoped that, by advocating for Syrian refugee return, they would contribute to rehabilitating the legitimacy of the Syrian regime. In their viewpoint, implementing a refugee repatriation agenda would demonstrate to the international community that calm has indeed returned to regime-held areas (Fakhoury & Ozkul 2019). Within this climate, the compact, which according to the EU is set to boost and optimize refugee integration, has become ensnared in the complex geopolitics of Lebanese-Syrian relations.

Contextualizing the EU's "positive incentives" in the Lebanese case: does linking trade and refugee employment work?

Notwithstanding the incongruence between Lebanon's socio-political realities and the compact's approach to refugee inclusion, a question that has been at the core of our field research is why the EU has failed to include linkages between trade and refugee employment in Lebanon. As mentioned, despite ongoing negotiations on trade facilitation schemes between the Lebanese government and the EU and although promoting trade between Lebanon and

the EU in the context of displacement has been at the heart of the EU's diplomacy (Fakhoury2020b), the Lebanon Compact remained silent on that front. To understand the disparities in perceptions between EU and Lebanese stakeholders and why linking trade with refugee labour has not materialized in that case, we conducted a series of in-depth interviews with several stakeholders. As noted in the methodology section, we spoke to Lebanese officials in the Ministry of Foreign Affairs and Emigration, the Ministry of Economy and Trade, and the State Ministry for the displaced (dissolved in 2020). We also met with representatives from the EU Delegation, the UN Refugee Agency (UNHCR), the World Bank, and the International Labour Organization (ILO). Furthermore, we had extended conversations with civil society activists and leaders of non-governmental organisations in Lebanon. The aim was to gain an insight into Lebanon's trade relationship with the EU, various stakeholders' perceptions of this relationship, and the contextual conditions that have impacted the adoption and implementation of the compact. In the sections below, we explore both key technical and context-based impediments that have made the nexus between trade and refugee employment more of an aspirational scheme than reality in the Lebanese case.

Technical and structural impediments to trade with the EU

*Why doesn't the EU give Lebanon the opportunity to export more irrespective of the refugee issue?*³⁰

In the wake of the compact's adoption, a joint EU-Lebanese trade working group was established in 2017 to explore opportunities enhancing bilateral trade and preferential trade arrangements under the EU-Lebanon Association Agreement. Still, it emerges from our research that progress has been very slow due to technical impediments to trade facilitation on the one hand, and to Lebanon's reluctance to associate trade with refugee integration and employment on the other.³¹ All of our Lebanese interviewees concurred that linking trade preferences and refugee employment failed to fit Lebanon's economic and socio-political settings. They also underlined that linking

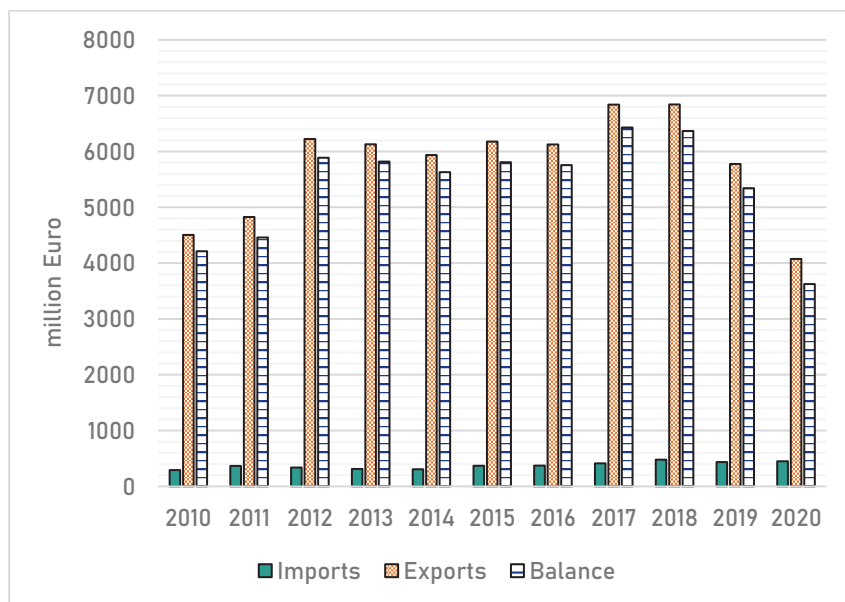
³⁰ Interview with Lebanese official, Ministry of Economy and Trade, 19.2. 2019.

³¹ Interview with Lebanese officials, Ministry of Foreign Affairs and Emigration, Beirut, 21.2.2019.

refugee aid with trade would be more of a liability than a boom in the context of Lebanon's trade relationship with the EU.

Bilateral trade between the EU and Lebanon has steadily increased from €3.7 billion in 2007 to €7.7 billion in 2018.³² Still, as Figure 2 shows, trade flows have remained heavily and persistently tipped in favour of the EU.³³

**Figure 2. European Union Trade with Lebanon
2010-2020**



Note: Total goods: EU trade flows and balance, annual data 2010-2020

Source: European Commission Directorate-General for Trade, 2020a (own processing).

³² The EU-Lebanon Sub-Committee cluster on Trade, Industry and Services, and Customs (2018), General Development of Trade Indicators on goods and Services, DG Trade-Unit E.3, Brussels- 7 March 2018.

³³ The EU-Lebanon Sub-Committee cluster on Trade, Industry and Services, and Customs (2018), General Development of Trade Indicators on goods and Services, DG Trade-Unit E.3, Brussels- 7 March 2018.

According to the annual data 2010–2020, EU imports from Lebanon in 2020 amounted to €0.45 billion while its exports reached €4.07 (European Commission 2020a). Around this period, Lebanon exported mining products (€0.1 billion), agricultural and raw materials (€0.11 billion) and chemicals (€0.05 billion) to the EU, whereas EU exports to Lebanon consisted mainly of fuel and mining products (€1.28 billion), machinery and transport equipment (€0.78 billion) and chemicals (€0.75 billion) (European Commission 2020a). Within this context, our interviewees had a negative assessment of the EU-Lebanese Association Agreement in general and the trade relationship in particular. They have particularly questioned the extent to which a persistent trade imbalance may evolve into a win-win scenario when Lebanon's market access to the EU remains extremely limited.³⁴

*The EU markets are not receptive to our products. At the same time imports from the EU have negatively affected the Lebanese market. In this context, the EU is called to provide Lebanon with additional incentives to cooperate on trade.*³⁵

It emerges from our research that the EU-Lebanon Joint Working Group (JWG) on Trade and Investment has indeed provided a flexible platform since 2017 to discuss trade preferences and identify why Lebanese products have not met the EU's technical requirements for exports. Still, a disparity in perceptions and expectations has arisen between the two parties. For instance, the EU argues that in order to increase agri-food exports from Lebanon to the EU, the Lebanese government would need to improve compliance with EU/international SPS standards, especially when it comes to animal products destined for human consumption. Lebanon would also need to improve the competitiveness of plant-based products (e.g., fruit and vegetables) when it comes to criteria such as quality and price.³⁶ According to our Lebanese respondents, however, although Lebanon has manifested over and over again

³⁴ Interview with Lebanese officials, Ministry of Economy and Trade, 19.2. 2019; 29.1. 2019.

³⁵ Interview with Lebanese official, Ministry of Economy and Trade, 29.1. 2019.

³⁶ EU-Lebanon Economic Subcommittee Cluster Fostering Growth and Job Opportunities 7th to 9th March 2018, MINUTES AND OPERATIONAL CONCLUSIONS, Summary

its intent to develop its export capacity and to work on quality standards, the EU has imposed technical barriers that are too difficult to surmount.³⁷

EU authorities justify Lebanon's incapacity to boost exports on the basis that there is no autonomous food safety authority in Lebanon that monitors agri-food products. In other words, they prescribe to us how we should go about [...] The EU interferes in the characteristics of our operations while we are interested in whether the products reach the EU market or not. In this context, negotiations have been very slow [...] we do not share the EU's viewpoint that the quality of our products is not good enough. 38

In the light of the EU's offer to facilitate trade in Lebanon's garment industry in return for refugee employment, Lebanon has not met EU conditions in the textile production process.³⁹ The EU requires at least 50 percent of the fabric to be manufactured in Lebanon. In the post-war period, however, and in the context of Lebanon's economic recession, it is reported that Lebanon's textile industry has shrunk from 3000 to 245 factories.⁴⁰ Given such impediments, our respondents have argued that the EU's proposal to explore avenues for relaxing rules of origin and facilitating trade with Lebanon needs to address root of the problems impeding Lebanon's export potential. In that regard, they recommended that "the EU invest more in creating conditions for export potential" such as "supporting the infrastructure allowing for boosting export capacity".⁴¹ Beyond the EU's investment in capacity building and training, they suggested that the EU should explore ways with local actors to revive the run-down textile industry sector in Lebanon.⁴²

Within this climate, all our local respondents concurred that discussions on trade have not led to tangible results due to "unsurmountable reasons". The

³⁷ Interview with Lebanese official, Ministry of Economy and Trade, 19.2. 2019. Interview with Lebanese officials, Ministry of Foreign Affairs and Emigration, 21.2. 2019. Interview with Lebanese officials, Ministry of Ministry of Economy and Trade, 29.1. 2019.

³⁸ Interview with Lebanese official, Ministry of Economy and Trade, 19.2. 2019.

³⁹ Interview with Lebanese officials, Ministry of Foreign Affairs and Emigration, 21.2.2019.

⁴⁰ Interview with Lebanese official, Ministry of Ministry of Economy and Trade, 29.1. 2019; EU-Lebanon Economic Subcommittee Cluster Fostering Growth and Job Opportunities 7th to 9th March 2018, Minutes and Operational Conclusion, Summary

⁴¹ Interview with Lebanese official, Ministry of Ministry of Economy and Trade, 29.1. 2019.

⁴² Interview with Lebanese official, Ministry of Ministry of Economy and Trade, 29.1. 2019.

aforementioned are the Lebanese economy's reliance on imports and remittances rather than exports, the country's limited export capacity to the EU in addition to the EU's strict requirements on quality standards.⁴³ In sum, the EU's "declaratory diplomacy" to leverage trade in the refugee context has clashed with realities on the ground: Lebanon represents the case of a potential beneficiary country that is, however, not able to harness the opportunities that the EU can offer in the context of trade preferences.

Contextual impediments: The refugee challenge and a lacking political will

Aside from the technical obstacles surrounding Lebanon's trade relationship with the EU, all the local stakeholders that we interviewed, cited various factors as to why the nexus between trade and refugee employment fails to capture Lebanon's socio-political realities. First, respondents referred to constraints related to the governance of the refugee challenge itself. According to our informants, these constraints revolve around Lebanon's exceptionally high refugee intake, the non-encampment policy that the Lebanese state adopted since 2011, and the potential risks associated with the longer-term refugee integration in Lebanon. Adding to this, the compact's logic has, according to them, failed to address the historical dynamics and legacies of Lebanon's transnational labour ties with Syria. An additional reason that our interviewees emphasized, relates to the so-called "inappropriateness" of *linking trade* with refugee employment when Lebanon has made a significant contribution to the global refugee regime.

Notwithstanding these factors, our interviewees agreed that Lebanon's political divisions have greatly hampered the country's ability to negotiate with the EU on matters related to harnessing the development potential of the refugee challenge from the outset. We explore these reasons in greater detail in the following paragraphs.

In contrast to Jordan which has set up refugee camps, Lebanon has opted for a non-encampment policy,⁴⁴ making Syrian refugees less "of trackable or

⁴³ EU official, 18.1.2019.

⁴⁴ It is worth underlining here that this non-encampment policy has a security rationale. Lebanese policy makers have associated the establishment of refugee camps with enclaves of militarization and radicalization

spatially visible population group", according to our interviewees. In this context, our interviewees have underlined that informal employment opportunities have proliferated, making the Lebanese state unable to monitor the impact of Syrian refugees on Lebanon's labour market.⁴⁵ Due to the prevalence of informality and to the exceptionally high refugee intake, it became difficult, especially in the context of the open-border policy that has prevailed between 2011 and 2014, for the Lebanese state to track where Syrians are working and how their employment dynamics would affect Lebanon's working population.⁴⁶ Interviewees also emphasized that Lebanon's high refugee intake has overstretched its infrastructure and capacity, exacerbating tensions between host and refugee communities. Moreover, they stressed that historically, Lebanese political factions have been reluctant to integrate refugees in the context of the prevailing sectarian power-sharing system which privileges a so-called demographic balance amongst sectarian communities. In this context, the EU's proposal to associate trade with refugee employment was perceived not only as detrimental to Lebanon's interests,⁴⁷ but also, as one of our interviewees points out, an act of "political suicide"⁴⁸ for Lebanon's governing coalitions:

*Various discussions between Lebanese ministries and the EU on linking trade and refugee components have taken place but the Lebanese government refused it [...] It is a political decision. Legalizing Syrian labour is a step towards naturalization. Creating conditions for devising refugee employment schemes for a decade as Jordan has done contradicts with our realities.*⁴⁹

According to several of our interviewees, gaining a deeper insight into why this nexus was not appropriate to the Lebanese setting also requires an inquiry into Lebanon's transnational labour ties with Syria. Historically, trends of labour migration between Lebanon and Syria have escaped full-fledged institutionalisation (Kawakibi 2008; Fakhoury 2019a: 11). Since the end of the Lebanese Civil War in 1990, it is reported that as many as 500,000 Syrians

⁴⁵ Interview with Lebanese official, Ministry of Economy and Trade, 19.2. 2019.

⁴⁶ Interview with Lebanese officials, Ministry of Foreign Affairs and Emigration, 21.2.2019.

⁴⁷ Interview with Lebanese official, Ministry of Economy and Trade, 19.2.2019.

⁴⁸ Interview with Lebanese officials, Ministry of Foreign Affairs and Emigration, 21.2.2019.

⁴⁹ Interview with Lebanese officials, Ministry of Ministry of Economy and Trade, 29.1.2019.

have been working in Lebanon's informal economic sector (Salloukh 2005). Since the outbreak of Syria's war, many displaced Syrians have preferred informal employment rather than low-paid and restricted formal labour opportunities (Fakhoury 2019a: 11). In 2017, informal sources related that 40 to 50 percent of Syrians in Lebanon worked in informal sectors (Howden et al. 2017). In this light, our interviewees highlighted that adopting formal refugee employment quotas is not only impractical but runs counter to the realities of the Lebanese-Syrian labour regime, which has been governed for decades by informal labour norms.

Aside from context-specific factors, most of our interviewees were critical of the logic of "positive incentives" that surrounded the EU's discourse on refugee employment and trade in protracted refugee situations. One recurrent argument that our interviewees highlighted was that Lebanon has opened its borders to an exceptionally high refugee influx in a context characterized by disproportionate burden sharing. In this regard, our respondents argued that the EU could facilitate trade with Lebanon without conditional requisites⁵⁰ or without making trade facilitation incentives contingent on official refugee employment quotas.⁵¹ According to representatives from the Ministry of Economy and Trade, Lebanon has formulated an alternative approach to the EU's proposal to combine refugee employment and trade. Debunking the logic of conditionality, this approach consists of convincing the EU of boosting trade with Lebanon in the context of the refugee challenge without additional commitments.

Our approach is different. We are working on another type of politics with the EU, that of compassion. The EU is called to collaborate and help as our problems can spill over to the European continent. If Lebanon collapses, refugees will not stay here. They will go to Europe, and the EU is aware of this. Hence, until now, the EU has been providing financial aid without having to enforce conditionality on trade-refugee schemes [...] The more stable Lebanon is, the more guaranteed it is that Syrians will stay here. If

⁵⁰ Interview with Lebanese official, Ministry of Economy and Trade, 19.2.2019.

⁵¹ Interview with Lebanese officials, Ministry of Foreign Affairs and Emigration, 21.2.2019.

*military and security problems take place, Syrians will leave. So, this is our leverage.*⁵²

As noted earlier, these constraints notwithstanding, interviewees argued that Lebanon's existing political divisions and elite disagreements have weakened its capacity to negotiate with the EU on ways to strengthen the refugee-development nexus in the context of the EU's financial aid.

*Lebanon suffers from some governance problems that make it unable to leverage the refugee issue well. One of our important problems is political fragmentation. Coalitions have divergent perceptions of the same issue. Jordan has another governance apparatus: a monarchy that ensures that refugee policymaking is coherent. The Syrian refugee challenge happened while we did not have a government.*⁵³

Such divisions, according to our interviewees, have further prevented Lebanon from negotiating a trade deal with the EU that is not linked to refugee access to the labour market. According to them, negotiating such an unconditional deal – that is, a trade deal that is not conditional on Lebanon's integration of Syrian refugees in the labour market – would have consolidated Lebanon's international and regional position. This is particularly so, given that the small country has substantially contributed to the international refugee regime by admitting such large numbers of refugees.

Clashing expectations

In addition to our findings that Lebanon was not responsive to the "trade-refugee employment" nexus, it emerges from our research that a significant disparity in stakeholder perceptions has characterized the phase leading up to the compact's adoption. While the EU perceives the compact as a vector to provide refugees with more durable prospects, our local interviewees noted that the compact's adoption has served from the outset Lebanon's interests in limiting refugee integration. First, according to our interviewees, the compact ensures that the EU recognises the temporariness of refugee stay on the one hand, and the prevalence of Lebanese labour laws when it comes to

⁵² Interview with Lebanese officials, Ministry of Economy and Trade, 29.1.2019.

⁵³ Interview with Lebanese official, Ministry of Economy and Trade, 29.1.2019.

negotiating refugee access to employment on the other.⁵⁴ According to them, in its negotiations on the compact with the EU, the Lebanese government had insisted on including a footnote certifying that nationals who have fled Syria since 2011 are categorized as “displaced persons” and not refugees, and affirming that the compact shall not contradict with Lebanon’s objective to reduce the numbers of displaced Syrians and ensure their full repatriation. (European Union 2016: 12). Moreover, according to interviewed officials, the compact seeks to ensure that Lebanon’s law and priorities of its labour market rather than its commitments to the EU determine refugee access to residency and employment (European Union 2016: 12). Adding to this, the compact recognises Lebanon’s limitations and overburdened structures, and ensures that the EU ought to give priority to host communities as much as it gives to refugees (if not more).⁵⁵ In this regard, the compact marks a transitional moment in which Lebanon made it clear to the EU that aid should be equally allocated to both refugee and host populations, according to our respondents.

*We would like that the international community supports us economically in the context of the refugee issue. At the same time, we would like Syrians to return. In the meantime, we want to shift the priority to poorer host communities in Lebanon. The EU should take into consideration the burden.*⁵⁶

In this context, despite the ambitious policy rhetoric adopted by the EU’s former High Representative for Foreign Affairs and Security Policy Federica Mogherini and the Lebanese government headed by Saad el Hariri, the compact failed to establish any clear mechanism as to how Lebanon would commit to facilitating refugee access to residency and employment. It remains at best a non-binding and vague document which spells out aspirational pathways to refugee inclusion.

A few years into the adoption of the compact, the EU is well aware, according to our respondents, that Lebanon’s compact is at best a secondary tool in

⁵⁴ Lebanese official, Beirut, Ministry of Foreign Affairs and Emigration, 29.3.2019.

⁵⁵ Lebanese officials, Ministry of Foreign Affairs and Emigration Beirut, 21.2.2019.

⁵⁶ Idem.

pushing for refugee integration, and that its impact has “faded”.⁵⁷ In practice since its adoption, the compact has been replaced by other complementary pathways such as the Partnership Agreement or the Brussels Conferences for supporting Syria and the Region which have been co-hosted by the EU since 2017. According to EU stakeholders, Lebanon’s competing and divided authority structures have thwarted negotiations on the refugee-trade-development nexus.⁵⁸ Moreover, the government’s lack of support for refugee integration, the prevailing narrative on job competition between refugees and host communities,⁵⁹ and the country’s limited export capabilities have made of the trade-refugee employment more of an aspirational scheme than a tangible reality.⁶⁰

4.3 The EU-Jordan Compact: opportunities and pitfalls

Unlike the Lebanon Compact which received little coverage in the literature and which according to our field research is hardly known to local organisations and refugees,⁶¹ the Jordan Compact has inspired a wealth of research (Lenner & Turner 2018; Morris 2020). Following its adoption, the 2016 Jordan Compact was hailed as a “game changer” in the way refugee hosting countries and the international community had started responding to protracted refugee situations (Huang & Gough 2019). This new “policy model” links development and humanitarian aid. At the same time, it negotiates grants, loans, and trade facilitation schemes in exchange for asylum reforms and facilitated refugee labour integration (Barbelet et al. 2018a). In this regard, the compact promised to have a transformative impact on refugee rights while turning the refugee challenge into a development opportunity for Jordan (Tsourapas 2019 a&b). Indeed, since its adoption, the Jordan Compact has succeeded in removing some of the legal barriers to Syrian refugee employment while facilitating refugee access to education (Agulhas Applied

⁵⁷ Interview with EU officials, Beirut, 18.1.2019. Interview with ILO representative, Beirut, 23.1.2019.

⁵⁸ Interview with EU officials, 18.1.2019. Interview with ILO representative, Beirut, 23.1.2019.

⁵⁹ Interview with EU officials, Beirut, 18.1.2019.

⁶⁰ Interview with ILO representative, Beirut, 23.1.2019.

⁶¹ Authors’ informal conversations with local organisations and refugees in Lebanon.

Knowledge & the European Union 2019). Still, despite piecemeal improvements, several contextual constraints have hampered the compact from reaching the proclaimed target of issuing 200,000 work permits for Syrians. In December 2018, as few companies have been able to benefit from the EU's trade facilitation schemes, the initial compact was reviewed to reflect prevailing challenges.

In the coming sections, we place the EU-Jordan Compact in the wider context of Jordan's politics of refugee reception. We shed light on some of its accomplishments, namely when it comes to removing legal barriers to refugee employment. At the same time, we show how the compact's intent to associate trade preferences with refugee employment has only superficially addressed the complexities of Jordan's labour and asylum regime. We also show that its impact on boosting trade between the EU and Jordan is not clear at all, especially in the context of imbalanced trade flows and given the limited number of companies that have until now benefitted from relaxed Rules of Origin (RoO). At the same time, we show that the compact's design remained detached from a reading of Jordan's domestic challenges, and, in a wider perspective, from the geopolitical constraints that the longer-term integration of Syrian refugees entails for the monarchy. We also attract attention to some new and under-researched forms of inequity that the compact has entrenched in Jordan's migratory system. As Jordan has historically hosted a multiplicity of migrant groups and refugee communities, formalizing economic opportunities that are specifically dedicated to Syrian refugees has generated a perceived sense of discrimination in the eyes of other migrant groups.

The compact's promises and Jordan's politics of refugee reception

"Only the truly desperate accept jobs in the SEZs" (Tiltne et al. 2019).

Jordan today hosts about 660,330 registered Syrian refugees (UNHCR 2019a), making it one of the countries with the highest share of refugees per capita (UNHCR 2019a). While 123,210 registered Syrian refugees currently live in the camps of Zaatari and Azraq in addition to the Emirati Jordanian camp, 537,120 dwell in urban areas (UNHCR 2019b). Though Jordan has not signed the 1951 Refugee Convention, it adopted in 1998 a Memorandum of Understanding (MoU) with the UNHCR, giving the UN Refugee agency the prerogative to register displaced people for an initial period of six months before determining their

status. In 2014, it is reported that the MoU was updated, allowing the UNHCR to extend the initial period of stay of forcibly displaced persons to one year before refugee determination status (RSD) (Saliba 2016).

At the outbreak of Syria's war, Jordan (like Lebanon) adopted an open-door policy, calling displaced Syrians guests or "dyuf" (Achilli 2015). By 2014, in the light of tensions between refugees and host communities, and Jordan's military confrontations with militant groups from Syria, the government closed its borders to incoming Syrians. The new policy has since then subjected Syrians attempting entry via informal border crossings to deportation (Achilli 2015). In the context of these border restrictions, Jordan has gradually imposed severe restraints on refugee mobility in urban areas. In July 2014, the government ordered that the UNHCR to stop issuing Asylum Seeker Certificates (ASC) to refugees who have exited the camps without having the required "bail out" documents (Tsourapas 2019a). The Syrian Refugee Assistance Department (SRAD), in charge of processing "bail out" documentation, imposed various requisites for refugees who wanted to exit the camps. For instance, refugees had to find a Jordanian sponsor or Kafil who is married, affluent and more than 35 years old. These measures significantly restricted refugees' mobility and their access to livelihoods, public health care, and education. Although Jordan allows refugees in possession of a work permit to seek employment, an ILO report shows that only 1 percent of Syrian refugees had a work permit by 2015 (ILO 2015; Brun 2016). In this context, informal employment opportunities have gained ground.

The EU-Jordan Compact, negotiated in the context of the 2016 London conference, promised to alter this situation. The agreement, that would initially last for 10 years, envisaged relaxed Rules of Origin (RoO) to Jordanian companies that were located in Jordan's eighteen Special Economic Zones (SEZ) and that ensured that employed Syrian refugees represented 15 percent of the company's workforce in the first two years, and at least 25 percent after this period. Moreover, as noted earlier, an extension of trade facilitation schemes is foreseen once the target of 200,000 jobs is achieved. Following the adoption of the compact and in the context of the Brussels Conferences co-hosted by the EU since 2017, the Jordanian government has gradually introduced several policy measures aimed at facilitating Syrian refugee employment. It agreed to waive the fee that Syrian refugees had to pay to obtain a work permit. This permit could cost more than US\$ 500. To allow for

more flexible employment, the government also started facilitating the issuance of short-term work permits. It furthermore excluded Syrian refugees from restrictive employment quotas on migrant workers. Adding to this, it allowed Syrians living in camps to work outside, and facilitated the granting of flexible permits in the sectors of manufacturing, agriculture and construction (Agulhas Applied Knowledge & the European Union 2019). By devising formal employment opportunities, the compact was lauded for mitigating refugees' fear of deportation and harassment (Abu Hamad et al. 2017).

According to the EU, by 2019, over 110,000 work permits have been issued (European Commission 2018). Yet these figures are misleading. According to Lewis Turner, a scholar who has written extensively on the Jordan compact, work permit numbers are cumulative rather than concurrent as they do not reflect how many Syrian refugees are actually working, and whether they are integrated in the Jordan labour market.⁶² It is, for instance, possible for the Jordanian government to increase the number of work permits through a variety of ways such as granting work permits to the same people every year or giving the same person several job permits. In this instance, while we know how many work permits are issued, we do not know how many people are in possession of such work permits, and how many of these work permits represent renewals.⁶³ Indeed, by July 2017, as only 60,000 permits were granted, Jordan's Ministry of Labour stipulated that each Syrian refugee could have more than one work permit, arguing that permits are not about individuals but about opportunities (Tsourapas 2019a: 9). Against this backdrop, the number of Syrians who have accessed informal labour opportunities, according to Jordan's Ministry of Labour, still exceeds by far the number of those in possession of a formal work permit (Ibáñez Prieto 2018; Fakhoury 2019a: 11).

A plethora of literature has unpacked the manifold factors that have thwarted the compact from reaching its goals (Fakhoury 2019a; Morris 2020; Tsourapas 2019 a&b). One important reason is the mismatch between refugee preferences and skills on the one hand, and existing opportunities on the other. In contrast to Asian workers who have worked for decades under

⁶² Lewis Turner, senior researcher and expert on the Jordan Compact, interview with authors, Freiburg, 22 August 2019.

⁶³ Turner, Freiburg, 22 August 2019.

strenuous conditions in Jordan's garment sector, many Syrian refugees have been reluctant to do so due to a variety of reasons. Unappealing employment conditions in remote Special Economic Zones such as low pay, long commutes, expensive transportation, and the unavailability of day care, have made of such work schemes largely unattractive for many Syrian refugees (Amjad et al. 2017; Barbelet et al. 2018a; Fakhoury 2019a; Lenner & Turner 2018.). Syrian women have particularly highlighted the incompatibility of employment in remote factories with their daily challenges and the prevalent social pressures they are confronted with. In this context, despite the compact's adoption, their participation in the labour force has seen only a minor improvement since 2014 (Tiltne et al. 2019). Moreover, as a substantial number of Syrian refugees residing in Jordan have previously worked in the agricultural sector in Syria, they did not have the matching skills that would allow them to work in the garment and exporting industry (Amjad et al. 2017). According to a 2017-2018 FAFO survey, only a minority of interviewed refugees are familiar with the Special Economic Zones, and one-third would accept a job offer in these zones provided adequate wage levels and short commute times were negotiated (Tiltne et al. 2019).

Aside from these constraints, the 2016 compact failed to capture the formal and informal dynamics underlying Jordan's labour regime. At the formal level, as Lenner and Turner (2018) show, closed professions to Syrians, in addition to the allocation of rigid employment quotas benefitting Jordanian and migrant workers, have undermined Syrians' access to the labour market in the wake of the compact's adoption. In practice, this segmentation has led to the redistribution of jobs rather than to the reconfiguration of employment rules (Lenner & Turner 2018). In 2018, a few days before the 'Brussels Conference on Supporting the Future of Syria and the Region' that was co-hosted by the EU, more than sixty NGOs in Jordan released a critical report, stating that the practice of granting work permits has not led to sustainable and dignified employment (Dupire 2018; Fakhoury 2019a: 11). The Jordan INGO forum stated that "while the numbers of registered workers are progressing, work permits do not necessarily mean new jobs, decent working conditions or increased revenue generation for Syrian refugees" (Dupire 2018).

In addition to these formal barriers, informal and unregulated albeit deeply entrenched patterns of segmentation within the market have impacted Syrians' ability to access employment. For instance, according to Turner,

“informal and semi-formal structures” relating “to who does what kind of work” in addition to “deeply racialized stereotypes as to what kinds of populations are suitable for certain types of jobs”⁶⁴ have historically characterized Jordan’s labour market. Such deeply embedded norms in addition to employers’ vested interests in safeguarding existing patterns of labour have certainly undermined the numerical targets that the compact initially aspired for. As mentioned, Jordanian employers questioned employing Syrians in certain traditional sectors where Asian migrants have worked (Lenner & Turner 2018).

In recent years, Jordan has sought to tackle some of the compact’s shortcomings. As noted, the government devised opportunities for issuing more flexible and short-term work permits. It created work opportunities in the construction and agricultural sectors. Additionally, to tackle refugee grievances regarding work in remote Special Economic Zones, the government facilitated projects that allow for home-based businesses (Agulhas Applied Knowledge & the European Union 2019). Easing residency status for Syrian refugees and providing them with formal employment opportunities have however not necessarily led to more decent living conditions. It is reported that 83 percent of Syrian refugees live in poverty (UNHCR 2018b), and that only one-third of employed Syrians possess a valid work permit (Tiltne et al. 2019). Incidents of exploitation and vulnerability have proliferated, reflecting that the compact is no replacement to institutionalised refugee protection measures.

Notwithstanding Jordan’s commitments to refugee inclusion, there are several indicators reflecting that the Kingdom would not relinquish its “guest approach” to Syrian refugees (Yahya 2018), and that the reforms undertaken so far would likely not lead to an overhaul in Jordan’s refugee protection norms (Fakhoury 2019a), including its respect to the principle of non-refoulement (FARS News Agency 2017). In 2018, despite ongoing violence in Syria, Jordan closed its borders to 60,000 Syrians who have gathered at the borders, and the Jordanian King Abdullah II bin Al-Hussein announced that Jordan would not welcome any new Syrian refugees (Alrababa’h & Williamson 2018). In this specific instance, Jordan declared that devising measures will not be taken for

⁶⁴ Lewis Turner, interview with authors, Freiburg, 22 August 2019.

the safe return of these 60,000 Syrians rather than their reception being a top priority (Al-Khalidi 2018a).

Contextualizing the EU's "positive incentives" in the Jordan case: how attractive is linking trade and refugee employment?

In the light of various challenges at the core of Jordan's labour and asylum regimes, the proclaimed objective of issuing 200,000 work permits for refugees has so far not been materialized. At the same time, key questions at the heart of the trade-for refugee employment nexus arise: to what extent has the EU been able to deploy trade as "a positive incentive" in exchange for refugee employment in Jordan? To what extent have Jordanian companies benefitted from these simplified Rules of Origin? To what extent can the Jordan Compact provide a paradigmatic policy model for beneficiary states desirous to boost trade opportunities with the EU? We argue below that simplifying rules of origin is no solution to boosting trade with the EU. Furthermore, we attract attention to the complex, albeit under-researched, geopolitical implications that linking trade with refugee employment yields for the Hashemite Kingdom.

Technical impediments to trade with the EU

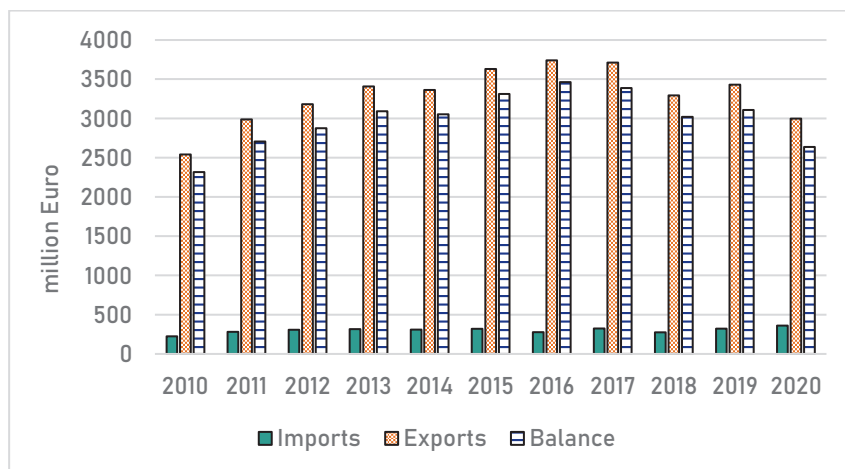
Four years into the adoption of the compact, the extent to which the trade-refugee employment scheme has evolved into an appealing option for Jordanian companies is highly disputed. In 2017, it is reported that less than 10 companies of the eligible 936 companies in the SEZ have been able to recruit 15 percent of Syrian refugees so as to benefit from the relaxed rules of origin (RoO) that would facilitate exportation of products to the EU (Amjad et al. 2017). Moreover, low levels of additional exports to the EU since the adoption of the compact show that the promised improved trade access to EU markets has not materialized (Agulhas Applied Knowledge & the European Union 2019). In addition to the mismatch between Syrian refugees' preferences and the factories' needs, additional factors have weighed in. In practice, numerous legal and technical impediments have stood in the way of the effective implementation of this new RoO scheme with the EU (Agulhas Applied Knowledge & the European Union 2019). Moreover, factors such as lack of experience and scarcity of marketing networks have hampered companies' ability to benefit from such RoO schemes for boosting their exports (Temprano

Arroyo 2017). It is reported that by 2018 private employers who have benefitted from the relaxed rules of origin had not exceeded a dozen (Gordon 2018; Lenner & Turner 2018). It is furthermore not clear whether the companies that have benefitted from these RoO schemes are the same ones that have benefitted in the past, and whether these benefits can be primarily attributed to some companies' advantageous marketing strategies and previous knowledge of the EU market.⁶⁵ Further research is warranted in that regard.

Just like the Lebanese case indicates, relaxing rules of origin is no panacea. In theory, Jordan has welcomed the economic benefits that it could derive from trade facilitation schemes with the EU given that this offer aligns with its historical practices of extracting revenue through foreign aid (Tsourapas 2019b). In practice, EU's technical requirements for manufactured goods alongside structural factors at the heart of the imbalance of trade flows between the EU and Jordan limit the use of trade as a "carrot" in the context of refugee integration. Indeed, as Figure 3 shows, despite Jordan's longstanding trade relationship with the EU, trade flows remain imbalanced in favour of the EU (Fanek 2017; European Commission Directorate-General for Trade 2019a). Herein, it is not clear whether and if so, how the compact intends to target this asymmetrical trade relationship.

⁶⁵ Authors' informal conversations with researchers working on the Jordan Compact.

Figure 3. European Union Trade with Jordan 2010-2020



Note: Total goods: EU trade flows and balance, annual data 2010-2020

Source: European Commission Directorate-General for Trade, 2020b (own processing).

According to the annual data 2010-2020, trade in goods between the EU and Jordan in 2020 amounted to €3.4 billion with a noticeable imbalance in favour of the EU. While Jordan exports to the EU consisted mainly of chemicals (€0.12 billion), fuel and mining products (€0.07 billion) as well as machinery and transport equipment (€0.05 billion), the EU exported machinery and transport equipment (€3.0 billion), agriculture and raw materials (€0.77 billion) and chemicals (€0.60 billion) to Jordan (European Commission 2020b).

Given the compact's dissatisfactory balance sheet in terms of refugee job creation and improvement of trade opportunities with the EU, a review of the compact has taken place in December 2018. The new deal intends to make the compact more appealing and applicable to nation-wide companies beyond the Special Economic Zones. It foresees that once Jordan grants 60,000 "active" work permits to Syrian refugees, nation-wide Jordanian companies that manufacture industrial goods included in the scheme will be able to benefit from the alternative Rules of Origin. In addition, the minimum employment requirement for Syrian refugees will be reduced or lifted (European Commission 2019b). At the time of writing, this review is yet to come into effect

as Jordan still has not reached the assigned number of “active” work permits. Further research is required to understand what (unmet) stakeholder expectations prompted this review, and whether and if so, how this review bodes well for refugee integration and Jordan’s trade relationship with the EU.

Linking trade and refugee employment: a precarious balancing act

Literature has primarily focused on understanding the labour-related challenges characterizing the linkages between the relaxation of rules of origin and refugee employment in Jordan (Huang et al. 2018). Less attention has been dedicated to the various ways in which the policy design of the compact has interacted with Jordan’s socio-political cleavages and its historical refugee regime. We argue that, understanding the EU’s ability to deploy trade as a positive incentive in exchange for refugee employment necessitates a deeper inquiry into the geopolitics of such a move. On the surface, Jordan seems less of a divided society than Lebanon. About 95 percent of Jordanians are Sunni (Valbjorn 2019), and a minority is Christian. Unlike Lebanon’s communities that have portrayed Syrian refugee integration as a factor that could potentially disrupt Lebanon’s power-sharing system, Jordanians have looked at displaced Syrians at the outset of the conflict as “brothers” in need of protection. Notwithstanding security spillovers, Syria’s war has not divided Jordanian political factions the way the lethal conflict has shaken Lebanon’s governing coalitions. Also, the monarchy’s relationship with the Syrian regime is not as contentious and turbulent as the Lebanese case has been. Rather, kinship and cultural ties have facilitated Syrian refugee influx into Jordan (Achilli 2015: 3). Moreover, Jordan has a longstanding history in leveraging foreign aid for extracting revenue and alleviating unemployment, making the EU’s deal of integrating refugees in exchange for boosting trade and attracting loans and grants highly enticing for the monarchy. Unlike Lebanon’s refugee policy making that has been marked by major inconsistencies since the outbreak of the Syrian war, Jordan has displayed a more coherent policy line in its refugee stances and practices. At the same time, in contrast to Lebanon’s competing authority structures, Jordan’s

centralized authority has made its interactions with the EU predictable and reliable.⁶⁶

Still, an understanding of why the compact has yielded partial success necessitates a wider reading beyond Jordan's segmented labour market and its trade relationship with the EU. More specifically, it needs to be embedded in Jordan's socio-political challenges and the various geopolitical risks that the longer-term integration of Syrian refugees entails for the Hashemite Kingdom of Jordan. For decades, Jordan has been plagued with a myriad of structural problems such as low wages, high unemployment, insufficient job creation opportunities, and dependency on foreign labour in certain sectors such as the garment industry. Furthermore, the Hashemite Kingdom has been subject to deep divides that a simple focus on the benefits of simplifying rules of origin in return for refugee employment glosses over. Jordan's regime stability has to a great extent been contingent on the monarchy's ability to tread carefully within existing cleavages and manage them to ensure regime resilience. Although Jordan is not a classic case of Sunni-Shia tensions, the endurance of the monarchy has historically revolved around a cautious governance of deeply enshrined cleavages. For example, Jordan is a key site for an "important identity divide" between the Trans-Jordanians and the Palestinian Jordanians (Valbjorn 2019: 10). The monarchy has in this regard practiced a discriminatory style of politics which favoured the recruitment of Trans-Jordanians and tribal Bedouins in security and military institutions in addition to their appointment in the public sector. Jordan's electoral law has moreover favoured the predominance of pro-regime Trans-Jordanians in the legislature.

In addition to the monarchy's political balancing act, Jordan has a history of simmering societal grievances that wax and wane (Ryan 2018; Valbjorn 2019). To preserve its stability in the face of domestic tensions, the Kingdom has sought hard to ensure grassroots loyalty and manage tensions especially over unemployment. Following the 2011 Arab uprisings, the Kingdom has been vulnerable to a variety of economic and geopolitical challenges. The influx of Syrian refugee has imposed various challenges on the government when it comes to providing employment and basic services to its citizens (Kumaraswamy & Singh 2017). In 2018, Jordan experienced mass protests,

⁶⁶ Authors' informal conversations with policy makers, civil society activists and EU officials in Lebanon and Jordan.

reflecting popular dissatisfaction with the Kingdom's social and economic politics. In this context, though the Jordan Compact presents an important "source of aid", academics such as Sean Yom have warned that the Kingdom's commitment to create jobs for Syrians presents numerous risks "when it's facing, in many tribal communities, severe anti-government sentiment and severe unpopularity" (Howden 2017). Indeed, faithful to its legacy of managing domestic tensions, Jordan cut bread subsidies in the light of the 2018 protests. The government posited that foreign workers and Syrian refugees have mostly benefitted from such subsidies, and that Jordanians should instead benefit from the saved funds. (Al-Khalidi 2018b; Fakhoury 2019a: 14). In this context, insofar as Syrian refugee integration is concerned, the Jordanian monarchy would most likely comply with its spelled-out commitments with the EU as long as these commitments do not foment additional tensions or destabilize vested business interests (Fakhoury 2019a: 15; Ryan 2018).

Aside from such challenges, the Hashemite Kingdom has had to navigate a troublesome politics of refugee integration for decades. The Hashemite Kingdom has welcomed refugees and migrants from different neighbouring countries and further afield historically. Worth noting are the several waves of displacement from Palestine since 1948. In addition to Palestinians who came to Jordan after 1948 and who were subsequently naturalized, Jordan also welcomed ex-Gazan refugees from Palestine who arrived in 1967. These are banned from working in several sectors (Brun 2016: 397). In the course of neighbouring conflicts such as the Second Gulf War and the Darfur Crisis, Jordan has also welcomed displaced Iraqi and Sudanese individuals. Moreover, the Hashemite Kingdom hosts important migrant labour communities from Egypt and Asia. In this context, the compact that devises formal employment opportunities only for Syrians has created tensions with other refugee and migrant populations. For instance, Iraqis expressed dismay as to why they were not included in the compact's arrangements.⁶⁷ Egyptians who constitute the largest migrant labour group in Jordan before the influx of Syrian refugees have seen their employment opportunities shrink. Research shows that new policies, that have given Syrians priority in certain sectors without addressing the underlying problems that Jordan's segmented labour

⁶⁷ Lewis Turner, Interview with the authors.

market suffers from, have thrown Egyptian migrants in a state of vulnerability (Hartnett 2018).

Against this background, given Jordan's longstanding reception of large migrant labour communities from Asia and Egypt and its history of carefully managing protracted refugee situations (Brun 2016: 357), it is very likely that Syrian employment will evolve into a politicized issue in the long run. At this juncture, devising formal refugee employment quotas in exchange for trade preferences is risky geopolitical business for host states that have received large shares of heterogeneous refugee groups without signing the 1951 Convention. The compact which explicitly spells out opportunities for Syrian refugee employment risks entrenching new forms of inequity and disregarding the complex legacies that characterize Jordan's fragile refugee regime. Further research is warranted in that regard to understand how compacts may navigate such complexities without disrupting the fragile equilibrium within the refugee landscape and between refugee and host communities.

4.4 Discussion

The two illustrative case studies have assessed the varying conditions under which trade preferences can be deployed in crises of displacement. It has shown that compacts are not a quick fix to protracted refugee situations. If not supported by a favourable context, such policy models will likely stir tensions or remain declarations of intent. In that regard, we have demonstrated that individual characteristics of countries matter and that the EU need to adapt its templates to the countries' historical legacies, contextual realities and economies. We have also shown that deploying trade as a carrot or a positive incentive is likely to be more aspirational than a concrete move if host countries are in no position (Lebanon) or in a limited position (Jordan) to benefit from such opportunities. Most importantly, our findings show the importance of understanding how compacts interact with the geopolitics of refugee governance in host states characterized by what Lama Mourad (2019) frames as "open borders versus local borders". By this we mean that host states such as Lebanon and Jordan traditionally have opened their borders to refugees while resisting initiatives to reform their asylum systems or grant displaced individuals more rights.

In Lebanon, strong political divisions hampered the development of a coherent governmental response to the EU's offer to deploy trade facilitation schemes in exchange for refugee inclusion. Moreover, the country's polarized relationship with Syria and its historical reluctance to integrate refugees have thwarted the EU's policy instruments from evolving into more than aspirational schemes. In the wake of widespread displacement from Syria, Lebanon's ruling coalitions have drawn on refugees as a bargaining chip to brand themselves as protectors of Lebanon's power-sharing equilibrium (Fakhoury 2020a). In addition, since the balance of power has tipped in favour of the Syrian regime, some Lebanese political executives have pushed for refugee repatriation to (among other purposes) legitimize the Bashar al-Assad rule and brand its victory. In other words, the compact's adoption and implementation have become deeply embroiled in Lebanon's cleavages and in the broader geopolitics of Syria's war. Adding to this, it emerges from our research that Lebanese officials have referred to variables such as the policy of non-encampment that the Lebanese state has opted for, Lebanon's extremely high refugee density, and the lack of burden-sharing in the international system, as key constraints that have made linking refugee employment with trade schemes particularly challenging for a strained refugee hosting state. As our analysis has shown, the incentive to capitalize on trade for the purpose of refugee integration is likely to create conflicts in contexts that are domestically divided over refugee integration. The incentive of trade is moreover not "incentivizing enough" in contexts characterized by asymmetrical trade relationships. In such a configuration, beneficiary states will more likely perceive trade agreements in exchange for formal deals on refugee employment as a liability rather than a win-win scenario. Furthermore, in situations of limited export capacity, beneficiary states will most likely find themselves unable to benefit from the offered trade opportunities in the first place.

Four years after the adoption of the Lebanon Compact, it is worth noting that the small polity has undergone sweeping changes that have further showed the inappropriateness of the "trade-refugee employment" nexus in the light of the prevailing conditions. Lebanon, which initially remained immune to the 2011 Arab uprisings, suffered in 2019 a major financial crash and experienced a wave of grassroots contention. Its unproductive and stagnant economy has been linked to a myriad of factors namely political corruption, reliance on imports, its non-existent industry, and the extremely limited job opportunities

that the Lebanese state has created for its working population. Within this climate, it is expected that the EU would have to reconfigure its policy approach in the coming years, towards the small polity as new modes of poverty and precarity have shaped and will dramatically shape the predicament of both host and refugee populations. In this regard, the proposal for a compact, which has initially aimed at exploring ways for Lebanon to increase its exports to the EU, does not really address Lebanon's structural economic deficiencies and the obstacles that would make it eligible to benefit from such an opportunity. As noted earlier, our local respondents stressed that the EU's proposal to explore ways for relaxing rules of origin and promoting trade, needs to tackle the root of the problems thwarting Lebanon's export potential. In that regard, they suggested that "the EU invest more in creating conditions for export potential".

In contrast to the Lebanese case, the Jordan Compact has led to more concrete outcomes. Jordan has displayed greater willingness in terms of leveraging aid to extract revenue. Its stable semi-authoritarian regime has provided the EU with a reliable interlocutor with regards to navigating the intricacies of the "trade-refugee employment" nexus. Most importantly, the Syrian war and the issue of Syrian refugee integration have not polarized interactions between governing political coalitions the way they have done in Lebanon. Historically, Jordan has not had the same conflictual patterns of interaction with Syria, unlike Lebanon in which the Syrian regime has been a controversially supreme military player on Lebanese ground since 1976. In this context, Jordan was more prone to test the potential of extracting economic benefits from the formal integration of Syrian refugees into its labour market.

Still, notwithstanding the progress that Jordan has achieved with regards to Syrian refugee employment since 2016, the compact remains a cautionary tale. On the surface, the Jordan example shows that capitalizing on the "trade-refugee employment nexus" is highly enticing for countries that historically rely on foreign aid to extract revenue. Such an innovative tool may also help to swiftly lift barriers to formal refugee employment. Still, it is no substitute to an institutionalised refugee protection mechanism. Despite its merit in facilitating refugee access to employment and education, the Jordan Compact as a policy tool has remained conspicuously detached from refugee preferences and rights on the one hand, and from a reading of Jordan's complex labour and geopolitical dynamics on the other. A deeper inquiry into Jordan's challenges,

reveals that Syrian refugee integration will most likely remain superficial and will not entail a significant restructuring of the highly segmented Jordanian labour market. As indicated, societal tensions and the monarchy's careful balancing act show that the Hashemite Kingdom will only encourage refugee employment in case it does not exacerbate existing tensions and allegiances. Here, we pointed to the importance of conducting further research on how boosting employment opportunities for Syrian refugees has stirred tensions within Jordan's very diversified refugee and migrant landscape.

In yet another perspective, it emerges from our reading of the Jordan Compact that relaxing rules of origin in refugee protracted situations has an ambiguous and unclear effect on boosting trade. According to our research, simplified RoO regime schemes have not addressed the structural constraints underlying limited export capacity from Jordan to the EU. Obstacles remain multifaceted and under-researched. They range from a lack of experience in Jordanian companies' marketing networks to an inability of factories to meet EU technical standards. Obstacles also hinge on the unwillingness of Syrian refugees to work in assigned sectors and in a mismatch between their skills and factories' needs (Temprano Arroyo 2017). Thus, encouraging the labour integration of refugees through trade in Jordan necessitates a variety of measures. First, it needs to account for a deeper examination of the obstacles that companies have encountered when it comes to benefitting from such a scheme. It also requires a more holistic understanding of what employment sectors would offer Syrian refugees dignified, matching, and longer-term job opportunities. Granting work permits is no substitute for sustainable employment.

Table 3 summarises the contrasting factors that have conditioned the compacts' differential implementation in the Lebanese (impeding) and Jordan cases (facilitating). This table clearly shows how contextual conditions within host states and in their relationship with the EU matter, and that these conditions largely shape the compacts' policy map and implementation.

Table 3. Impeding and facilitating factors to the compacts' implementation

| | Impeding factors in the Lebanese context | Facilitating factors in the Jordan context |
|--|---|--|
| Will/attitude towards trade-migration nexus | Lebanon's refusal to tie trade schemes with official quotas on refugee employment | Historical propensity to leverage foreign aid to extract revenue |
| Degree of policy coherence in asylum policy | Inconsistent refugee policies and fragmented authority structures | Coherence over asylum policy making |
| Refugee-camp policies | The policy of non-encampment formally adopted by the state | The refugee-camp policy |
| Political impact of Syria's war | Syria's war and the issue of refugee inclusion as dividing fault lines | Less visible polarization over the Syrian issue |
| Access to labour market for Syrians | Informal labour relations between Syria and Lebanon | Readiness to provide formal employment opportunities for Syrian refugees |

Beyond a comparative reading of impeding and facilitating conditions, Table 4 points to looming complexities in the implementation of the compacts in both cases. It summarises the challenges to the implementation of the compacts that are common to both countries, albeit articulated differently. This table further shows that although contextual factors have been more facilitative or helpful in the Jordan case, the compacts face, in both cases, key structural challenges of a geopolitical, social, and economic nature. These challenges attract attention to the consequences that an intersectoral policy approach tying refugee governance, development and trade may gloss over. In the next section, we show that such an intersectoral approach combining refugee issues with trade has also yielded significant consequences for the EU's external refugee policy.

Table 4. Comparable challenges underlying the compact's implementation

| | Challenging factors in Lebanon | Challenges in Jordan |
|---|--|---|
| Political stability | Highly divided politics with clashing loyalties | The monarchy's careful management of existing dissent and socio-political divisions |
| Degree of refugee inclusion | Historical reluctance to integrate refugees in Lebanon's sectarian society | The risky geopolitics of refugee and migrant inclusion |
| Employment and labour policies | High unemployment and bad record of job creation | High unemployment rate and highly segmented labour regime |
| Balance of trade with the EU | Trade flows heavily and persistently tipped in favour of the EU | Trade imbalance between the EU and Jordan |
| Characteristics of trade with the EU | Weak export potential to the EU; legal and technical challenges emanating from high EU product standards | Legal and technical challenges hampering companies from benefiting from simplified RoO schemes. |

The EU's external refugee policy, and the “good enough” compacts

Analysing contextual conditions that have shaped the materialization and implementation of the compacts is paramount to this report. This analysis, however, remains insufficient if it does not account for the implications of such policy instruments for the EU's external refugee policy and its role as an international refugee actor in advancing refugee norms in its vicinity.

In addition to the gap between the compacts' templates and socio-economic contexts on the ground (Barbelet et al. 2018a), experts have alerted to a key drawback that demands special mention in this report: the inability of the EU to tie compacts to refugee protection norms, and the consequences that this spells out for its declared objective to encourage and spur rights-based refugee reforms. Since compacts have not established clear mechanisms to ensure refugee protection, experts argued that the EU could have tied its financial and trade schemes to deeper and structural efforts to eliminate the legal and policy hindrances that have cast a pall on the compact's implementation (Lauten & Nelson-Pollard 2017). In this regard, ensuring an

auspicious protection context would have been pivotal to refugees' access to stay and employment.

In this critical literature of the compacts, several arguments were advanced as to why these policy instruments risk entrenching additional forms of refugee vulnerability instead of strengthening asylum systems. First, by associating refugee labour with financial and trade aid in a context which lacks refugee protection, these instruments risk generating newer and multiple forms of refugee precarity (Gordon 2018; Yaghmaian 2018). The Jordan case shows that granting work permits has neither led to sustainable nor to dignified employment. Second, by deploying the leverage of trade and financial aid, compacts risk consolidating rent-seeking state behaviour instead of the rule of law in host countries with a poor record in human rights (Fakhoury 2019a). According to our research, civil society activists have decried the implications of negotiating with political regimes that have ignored asylum reforms or drawn on the EU's funding to strengthen rent-seeking behaviour. For instance, in the context of Lebanon's 2019 economic crash, and social unrest which have decried the state's practices towards both its citizenry and migrant groups, the EU's cooperation with Lebanon's corrupt governing cartels has come under fierce criticism⁶⁸. Many experts and civil society activists have called for tracking where the EU's money has gone.⁶⁹ As noted, the EU has consolidated its financial support in the refugee issue, even though Jordan and Lebanon have upheld since 2011 a poor record in refugee rights. Notwithstanding border closures in the face of displaced Syrians since 2014, cases of deportation and a politics of crackdown on refugee rights in the sectors of employment, access to health, education, protection and housing have been reported in both countries, albeit in different ways (Fakhoury 2019a; Human Rights Watch 2019). Third, by promoting refugee economic resilience and the narrative of the refugee entrepreneur, the compacts may have contributed to decoupling "refugeehood" from the quintessential component of protection that the refugee status confers. Of importance here is the "encroachment of economic agendas into humanitarian contexts" (Morris 2020: 8) which reframes refugee crises as development opportunities, detracting from the humanitarian responsibilities that such challenges bring along. These

⁶⁸ [Corruption Perceptions Index 2020 for Lebanon - Transparency.org](https://www.transparency.org/en/cpi/2020/data/lebanon)

⁶⁹ Authors' informal conversations and field research in the context of Lebanon's 2019 protests.

practices tie into broader research trends on the political economy of displacement in which authors criticize “reducing the value of human life to the potential to extract economic productivity” (Ramsay 2019: 1). In yet a more complicated perspective, and as noted earlier, since the compacts have explicitly sought to create opportunities for Syrian refugee inclusion, they risk creating tensions and new forms of inequity amongst several migrant and refugee groups. This is particularly applicable to states that have historically hosted various refugee and migrant populations without having necessarily developed well-defined asylum norms. Compacts may in that regard reify and reproduce patterns of precarity and inequity.

Table 5 summarises some risks and trade-offs that the EU’s “trade for refugee inclusion” nexus has spelled for its capacity to promote reforms in its external refugee policy.

Table 5. Nexing trade and refugee employment: risks and trade-offs for the EU

| |
|--|
| Lack of clear mechanisms tying the compacts with an underlying protection environment |
| Creation and sustenance of new and older forms of refugee precarity and vulnerability |
| “Encroachment” of economic opportunities on humanitarianism and on the conception of “refugeehood” as a status inherently linked to protection |
| Cooperation with not-so-perfect regimes with a poor record in refugee rights, accountability, and the rule of law |
| Erosion of the EU’s capacity to diffuse refugee norms |

Certainly, the EU’s role is to be interpreted in the context of the so-called “stability-security” nexus, and its realist aspiration to shift towards a more pragmatic role in international relations (Juncos 2017; Fakhoury 2019a). As noted earlier, the compacts cannot be decoupled from the EU’s longstanding trajectory of externalising migration management and its search for refugee solutions within regions of origin and from a distance. They are also to be read as a recent manifestation of the EU’s extraterritorial policy approach, which consists of making neighbouring governments co-partners in the management of refugee flows within the broader Euro-Mediterranean region. In this regard,

many of our local interviewees noted that the compacts' proclaimed objectives have been taken less seriously as they serve the EU's logic of keeping refugees where they are.⁷⁰ Here, the EU is called to consider the trade-offs it faces between diffusing refugee protection norms and outsourcing strategies for refugee non-departure (Lavenex 2019). Its strategy of leveraging trade in refugee protracted situations certainly backfires on its declared goal of consolidating refugee protection in first countries of asylum. Moreover, scaling up partnership with host states irrespective of their track record in refugee rights certainly erodes the EU's position as a normative power in the Mediterranean.

⁷⁰ Interview with Lebanese official, Ministry of Economy and Trade, 19.2.2019.

5. Conclusion

The relationship between trade and regional cooperation has been a key concern for theorists and practitioners. In 1748, Montesquieu stated that "peace is the natural effect of trade".⁷¹ Liberal proponents of this approach have advanced that trade cooperation enhances peace and creates positive gains for negotiating parties. In contrast, realist critics of this approach have embedded trade in broader geopolitics. In this view, trade cooperation creates asymmetries in the distribution of power, potentially leading one party to exploit the other party's vulnerabilities either militarily or politically. Trade also entrenches dependencies that increase the likelihood for tensions and conflicts (Levy 1998, 149–150). Against this background, the developing nexus between trade and migration policies in EU external relations provide powerful insights.

A particularity of the EU as an international "market power" (Damro 2012) is the pre-eminence that its trade relations take both for internal integration and the association of third countries. The EU has a dense web of cooperation and association agreements, which combine preferential trade arrangements with wider social and political objectives towards partner countries. The inclusion of migration policy objectives is relatively new and has been shaped by distinct and partially contradictory dynamics that are illustrative of the complexity of migration processes and policies today.

As our analysis has shown, EU trade and association agreements included migration provisions long before the EU started cooperating on migration. From the 1960s to the 1980s, the trade migration nexus in EU commercial agreements centred on a diplomatic and rights agenda. Migration provisions in EU agreements concerned the social and economic rights of immigrants from associated countries and were included on demand of these countries and under the influence of the International Labour Organization. Some of these

⁷¹ Montesquieu CL. 1777. (1748). *The Spirit of the Laws*. Berkeley: Univ. Calif. Press, quoted in Levy, 1988, 149.

provisions expanded rights granted internally to EU nationals under the Single Market legislation, such as most prominently the 1963 Ankara Agreement.

The liberalisation of trade in services from the mid-1990s onwards is a second source of migration provisions in EU trade agreements that is external to and disconnected from the development of EU cooperation on migration and asylum. Inspired by the 1995 GATS agreement EU PTAs covering trade in services today include systematically provisions on the facilitation of the temporary mobility of natural persons active in trade in services and increasingly also other types of trade. While limited to mainly highly skilled executives and managers in specified sectors, these provisions are relevant for migration policy as they cover periods of stay for up to five years for intra-corporate transferees or up to one year for other categories of workers such as contractual service suppliers or independent professionals. This evolution in trade relations has remained largely without repercussions in EU migration policies. It finds no mention in the EU's Global Approach on Migration and Mobility defined in 2005 and reformed in 2011, or in the New Partnership Framework guiding EU external migration policies since 2016.

In contrast to the rights approach of the 1960s to 1980s or the commercial approach in trade negotiations, EU migration policy has addressed trade agreements pre-eminently from the perspective of issue-linkage as a means to incentivise countries of origin and transit of asylum seekers and migrants to cooperate in reducing immigration pressure to Europe. This issue-linkage consists in offering closer economic cooperation in exchange for collaboration on migration control, readmission and refugee protection. It has motivated the inclusion of the standard readmission clause in EU PTAs after the 2003 Sevilla European Council, the insertion of migration policy cooperation in EU Association Agreements and the contents of the latest instruments linking trade and refugee protection in the region, the compacts.

The instrument of compacts, which seeks to leverage the power of trade preferences in protracted refugee situations, provides a powerful case in point. As this study has shown, the cases of the Lebanon and Jordan Compacts generate new findings on how the EU's "trade-migration" nexus may get embroiled in the broader geopolitics of refugee governance. Both compacts give insight into whether and if so how, deploying trade in spirals of conflict and in the context of grand challenges such as mass displacement

helps to provide solutions to existing dilemmas or, rather, it creates additional dilemmas by deepening power asymmetries and generating new forms of precarity and inequity. Of importance here is whether the designed policy instruments are appropriate to the contextual settings and attuned to local legacies and perceptions. In the Lebanese case, our findings reveal a glaring mismatch in expectations and perceptions between Lebanese and EU officials, and a lacking political will on the part of Lebanon's governing coalitions to integrate Syrian refugees in the labour market. Our findings also echo Heliodoro Temprano Arroyo's thesis (2017) that when it comes to assessing whether the EU can incentivize countries to employ refugees in return for trade preferences, the Union needs to carefully weigh in whether the host economy is in a position of "competitiveness" to exploit this opportunity. In the light of stark trade imbalances between Lebanon and the EU, and given the EU's resistance to relaxing criteria towards Lebanese exports, and in the context of Lebanon's reliance on imports rather than exports, the small polity does not possess the prerequisites that allow it to harness the opportunity of trade in return for refugee employment. The EU's framing of trade as a "carrot" in that regard fails to evolve into a positive incentive, let alone a potential solution for maximizing refugee integration.

In Jordan, the compact has succeeded in removing some legal barriers to Syrian refugee employment. Its approach has provoked less political contention than the Lebanese case, and has been highly enticing to the Hashemite Kingdom, which historically has relied on international deals to extract revenue and optimize economic productivity. Still, a deeper analysis of the compact's implementation shows that its design remains disconnected from refugee voices, and from Jordan's formal and informal labour market norms. Most importantly, it remains decontextualized from a deeper understanding of Jordan's looming socio-political challenges, and from its complex historical refugee and migratory legacies.

While existing literature has so far dedicated much interest to the nexus between migration and trade in the EU's external policy, there is little understanding of how this nexus, once deployed in the case of protracted refugee situations, interacts with the geopolitics of displacement, potentially exacerbating existing disparities and undermining refugee rights or evolving into a case of conflictual politics between the EU and the partner government as the case of Lebanon shows. Against this background, there is a need to

identify what impeding and facilitating contextual factors shape the intended designs and goals of such tools, and how variation in states' responses and conditions mould these policy templates. Indeed, most literature indicates that both compacts in Lebanon and Jordan would have benefitted from a deeper grasp of the geopolitical characteristics of these two countries both as refugee hosting states and as host economies. The compacts would also have benefitted from a better understanding of refugee perceptions and preferences as well as a deeper insight into how the political economy of displacement interacts with refugee protection on the ground. In this regard, the EU would gain from developing a reflexive and intersectional policy approach (Hankivsky 2012) which allows for a more nuanced and complex understanding of how the compacts have interacted with existing dilemmas and prior forms of inequity as well as generated new ones. This would potentially feed into policy formulation, assessment, and evaluation.

To conclude, the use of trade policy instruments for EU migration governance offers opportunities, but it also bears significant challenges. In many ways, the analysis of this issue-linkage is illustrative of the deep contradictions and political tensions cutting through contemporary migration policies. The different logics in which EU trade and migration policies have become connected illustrate profound dissonances in how states' approach international migration at the nexus of human rights, commercial prerogatives and the security concerns. Rather than being subject to a coordinated comprehensive approach, the rights-mobility and control agendas in EU trade policy instruments have developed separately. Opportunities for synergies and coordination have not been used; instead, EU external migration policies have focused on trade policy instruments as means to enhance the EU's capacity to shield itself from undesired migration. As our case studies of the latest EU instruments, the compacts concluded in Jordan and Lebanon show, the opportunities associated with this approach tend to be thwarted by the challenges it creates both for EU external relations in general and for affected populations. In terms of EU external relations, the strategic instrumentalisation of economic concessions and development aid in exchange for self-interested migration policy objectives spurs the politicisation of EU trade policies, the EU's so far strongest diplomatic foreign policy tool and instrument of 'market power'. In terms of affected populations, in particular forcefully displaced persons and refugees, the privilege given to market instruments to step in where state responsibilities fail constitutes a

turn away from the traditional humanitarian approach of the international community, and the EU's self-identification as 'normative power'.

6. Policy Recommendations

This report's longitudinal and comprehensive analysis of the trade-migration policy nexus in EU external relations has revealed both continuities and unexploited potential for change which are relevant for policymaking on the side of the EU and partner countries. Our findings show that, until now, the EU has made a one-sided and not always successful use of its trade policy instruments within migration policy. The analysis suggests that trade policy instruments bear a greater potential for a comprehensive and coherent migration policy when the needs of both parties are addressed equitably and when trade and migration policy measures are designed in a manner that is sensitive to local contexts and legacies.

Our policy recommendations concern the coordination of trade and migration policy instruments; the need for balanced solutions; the importance of a differentiated and target-sensitive approach; and the consideration of normative implications – both on the side of the EU and partner countries.

Better coordination of migration and trade policies

A better coordination of migration and trade policy may open regular pathways for labour migration benefiting migrants, EU national economies and source countries alike. The longitudinal analysis of migration provisions in EU trade instruments has highlighted the coexistence of different dynamics shaping the nexus between the two policy sectors. Starting from the externalities of the EU single market, this nexus has incorporated the priorities of the evolving EU migration policy and has finally extended to labour mobility in the context of trade liberalisation. EU migration policy uses trade policy instruments as a source of leverage, that is, the utility of trade deals is seen in the incentives they offer for third countries to cooperate on migration control and the hosting of refugee populations. The report retraces this focus from the first discussions on including readmission clauses in EU trade agreements in the 1990s until the renewed emphasis on policy conditionality under the EU's New Partnership Framework and its flagship as well as the recent "compacts" signed with countries such as Jordan and Lebanon.

Our comprehensive review of EU multilateral and bilateral trade agreements, however, has shown that this is a limited and incomplete understanding of the relationship between trade agreements and migration policy. Next to migration control provisions, trade agreements also include commitments facilitating certain types of labour mobility. However, these avenues for legal migration have not yet been coordinated with, or integrated in, the EU's Global Approach to Migration and Mobility or the New Partnership Framework. We argue that with these provisions, **trade agreements contain an unexplored potential for labour mobility schemes**. This is important in at least three respects: the EU's declared ambition to develop a common policy on economic migration; its commitment to open up legal pathways for economic migration under multilateral frameworks such as the UN Global Compact on Migration; and considering partner countries' enduring demands. In contrast to third country economic immigration, which falls under the competence of the Member States, the liberalisation of the temporary mobility of natural persons linked to trade in services is a shared competence with the European Union. This offers a window of opportunity for developing new channels of temporary economic mobility for skilled as well as low-skilled workers moving as intra-corporate transferees, executives, trainees, contractual service suppliers, or independent professionals. As the analysis in this report shows, the agreed stay under these schemes can last from a few months – for contractual service suppliers or independent professionals – to a few years – for intra-corporate transferees or trainees. In particular, the relatively open category of (graduate) trainee can be conceived for circular mobility schemes. This would offer third country nationals temporary labour schemes combined with the development of particular skills that can be usefully re-invested upon return to their home country i.e. brain gain.

The EU may consider introducing temporary mobility schemes for (graduate) trainees and other workers combining a labour experience in an EU member states with a particular training/skill acquisition scheme. Such schemes have the **potential of generating "triple-win" solutions benefiting the migrants, their home country and the EU alike**. From the perspective of the migrant, they offer a regular pathway for gathering work experience and developing professional skills in an EU member state. For the home country, the fact that these schemes are temporary, reduces the danger of brain drain and encourages the circulation and accumulation of skills. In this context, it is important that the countries of origin provide support to the preparation of the stay abroad

and offer favourable return conditions facilitating the investment and local consolidation of acquired skills in order to fully realize the development potential of such schemes. Finally, from the perspective of the EU, such schemes can be harnessed to meet shortages in EU labour markets and to support sectors in need of foreign labour. Legal pathways to economic mobility are also in the EU's wider foreign policy interest given the clash between existing demand for such opportunities from the EU's partners and the lack of supply.

The nexus between trade policy and migration policy is, however, a delicate matter as it combines two very distinct policy fields, and each of these mobilise diverse interests and sensitivities. In relation to countries of transit and origin for migrants and refugees, the EU faces an asymmetric constellation of interdependence, where cooperation on migration control and readmission is mainly in its own interest and less in the interest of the third country. This is different in the case of trade, as cooperation is potentially beneficial for both sides, and it is this apparent apolitical nature of trade relations that makes them attractive as a venue for cooperation and issue-linkages. However, it is important that such issue-linkages respect the overarching principle of mutual gains. This motivates our second recommendation.

The need for balanced solutions

The use of trade instruments in migration policy must pay due attention to the preconditions for shaping a mutually beneficial cooperation. It must also seek to avoid that commercial ties become overshadowed by political tensions over migration. Commercial ties are a source of economic development and an instrument of friendly relations among states. The instrumentalization of commercial ties for political purposes (such as in the case of making trade concessions conditional on cooperation on migration control, or holding back refugees from travelling towards the EU) bears the risk of undermining economic prerogatives and deteriorating political relations. The EU should be wary not to antagonize its partners through excessive demands on curbing immigration, especially if the EU member states are not willing to engage on credible commitments regarding legal pathways for economic mobility (see above). This challenge is even more important given the EU's identity as a

market power and its reliance on its commercial ties for external relations at large.

It is moreover difficult for targeted host countries that suffer from limited export capacity to benefit from the opportunities that the EU has to offer. While the Lebanese case presents a grim scenario of a persistently imbalanced trade relationship, it is not clear whether the review of the Jordan Compact (2018) is at all able to significantly target the underlying dynamics as to why Jordan's trade flows with the EU have not picked up since 2016.

The nexus between trade and migration policies should, therefore, always **respect the balance of mutual gains** and **avoid the politicization of trade relations**.

A credible use of trade policy instruments must also **address underlying impediments causing imbalanced trade flows**. It is particularly difficult for the EU to offer positive incentives and promote the integration of refugees in the domestic labour market of third countries in the absence of reciprocal and balanced trade relationships.

The very existence of migration control as well as labour mobility provisions in EU trade policy instruments, and the fact that these two agendas have so far evolved in isolation from each-other, corroborates the need for better coordination highlighted above.

The need for a differentiated and target-sensitive approach

Our third set of recommendations concerns the need to avoid "one size fits all" solutions and the importance to tailor EU external policies so as to address domestically diverse political and societal contexts in partner countries.

Designing refugee compacts cannot be isolated from **a consideration of societal tensions, historical and geopolitical factors** affecting countries' labour and asylum regimes. As this study has shown, the compacts would have benefitted from a better grasp of countries' socio-political divisions, endemic challenges, and their geopolitics of refugee management. Without such considerations, EU policies lose effectiveness, and they may run into the void, as the case of Lebanon shows. In this regard, the EU ought to attune its policy

templates to the **countries' contextual realities, formal and informal economies as well as underlying historical legacies that govern refugee reception**. More specifically, in forging responses to refugee displacement, the EU needs to carefully consider variation in the way host polities react to and re-appropriate its policy templates and shape their implications on the ground. Varying conditions in partner governments mold to a great extent the EU's ability to harness the trade-migration nexus. Our analysis has highlighted the importance of taking various contextual factors in consideration: political stability in the partner country, geopolitical considerations, the degree of coherence in their migration/asylum policy, their readiness or lack thereof to negotiate trade agreements with the EU in the context of migratory challenges, and the existing trade relationship between the EU and the refugee hosting state. Against this background, the EU is called to refine **its external cooperation agreements in accordance with a complex constellation of variables**, especially when it comes to the cross-sectoral link between trade and migration.

The need for partner governments to seize agency

Our fourth recommendation concerns the partner governments and their capacity to harness the trade-migration nexus in cooperation with the EU according to their country's needs and priorities. The limited success of the trade-migration policy nexus sought by EU policies is not only due to the need for more comprehensive, balanced, and targeted policies on the part of the EU. The negotiation of preferential trade agreements and the conclusion of compacts give partner countries' governments a say in this cooperation. Our research shows that clashing expectations and perceptions between the EU and partner governments have impeded the implementation of objectives and commitments in both the Jordan and Lebanon compacts. Even though power differentials cannot be fully neutralized, cooperative arrangements give both parties some scope for developing ownership of the course of action and harnessing interaction in the direction of domestic priorities. In this regard, it is important that partner governments **assess their needs and priorities and communicate them effectively** in the negotiations with the EU. In line with a "reflexive governance" perspective, we recommend that the EU and partner governments **review and reevaluate negotiated policy tools in the light of evolving realities on the ground**. Moreover, partner governments should reach

out to **local actors and civil society organizations acting on the ground** in order to identify the most pressing needs as well as pathways for addressing these in collaboration with external actors such as the EU.

Guarantee due consideration to normative implications

Finally, our last set of recommendations concern the normative orientation, the rights-based approach and the coherence of migration and refugee policies in the EU and its partner countries.

The longitudinal analysis of EU's external migration policies has shown that the primary focus has been the fight against irregular migration and the attempt to convince third countries of origin and transit to cooperate in this endeavour, including, more recently, the hosting of large numbers of refugees. Often driven by regional crises and upheavals, such as the Arab uprisings or the war in Syria, these policies have tended to privilege short-term reactions and temporality, neglecting the long-term normative consequences. On the ground, such policies have privileged crisis governance measures in both the EU and its Southern Neighbourhood. Within EU studies, "remote control", "the architecture of repulsion" and "externalization of borders" are common lexical fields used to describe the EU's approach. On the other side of the Mediterranean, expressions such as "reluctant reception", "strategic ambiguity", and "manufacturing vulnerability" constitute a widespread register to describe the way governments deal with displaced individuals.

The importance of normative coherence regarding the driving values of the EU's migration and refugee policies is particularly salient in our analysis of the implementation of the EU compacts with Jordan and Lebanon. This also concerns the consistency between bilateral foreign policies and the EU's multilateral role. In addition, we cannot ignore the impact of partner governments' reluctant asylum policies on impeding the compacts from achieving their goals. In this regard, the EU and partner governments must ensure that **trade-related migration policies respect the broader commitment to refugee protection and rights-based humanitarianism**. Against the backdrop of the EU's trajectory of externalization and partner governments' lukewarm politics of reception, a key challenge of the trade-refugee policy nexus is the looming commodification of refugees, their instrumentalization for economic

or geopolitical purposes, and the encroachment of economic agendas on legal remedies. As this study has shown, the Jordan and Lebanon compacts remained disconnected from underlying refugee protection mechanisms that would substantially improve refugee conditions and create an auspicious environment for asylum reform. In this regard, the EU and host governments are called to envisage **longer-term commitments that would reconcile cooperative agreements on the trade-migration nexus with dignified options and solutions for refugees and host populations**. In the absence of underlying protection environments, compacts can be framed at best as **complementary tools that should neither predate nor replace the creation of institutionalized protection regimes**.

Most importantly, our research has shown that **the EU's trade-migration nexus cannot be isolated from broader debates and dilemmas on responsibility sharing in the international refugee complex**. In the context of protracted refugee challenges that have transregional reverberations as the case of displacement from Syria reveals, the EU's attempt to draw on trade to offer positive incentives for host polities to keep refugees "within the region" and far from EU borders, may have adverse consequences on cooperation. For instance, they may lead partner governments to contest and disregard negotiated instruments as they perceive them as unfair and inappropriate to their host populations in the context of their endemic challenges and overstretched capacity. From this perspective, it is important that the EU embarks with partner governments on **consultative processes regarding solutions for refugees that go beyond temporary opportunities and considering a wider array of durable solutions including integration, resettlement, and return in safety and dignity**. As the case of protracted Syrian displacement shows, these durable solutions have not been duly accounted for in the broader Euro-Mediterranean zone, and the EU's focus on the trade-migration nexus has so far not operated fully in coordination with its spelled out role of being a "frontrunner" in promoting international responsibility-sharing (See European Commission 2011). Within this climate, the EU's strategy of harnessing trade as migratory policy has fuelled contentious debates on short-termism, urgency, and temporality in tackling the roots of vulnerability and conflict.

In this context, it is equally important to reflect on the **connections between the EU's bilateral external migration policies and its international role in the**

support for multilateralism. Internal divisions among the member states and the EU's contested mandate on immigration have limited its leadership in the preparations leading to the UN Global Compacts on Migration and Refugees. Lack of leadership, however, results not only from internal divisions; it also stems from inconsistencies in external actions. EU bilateral migration policies towards countries of transit and first asylum for refugees should be carefully designed to match the cooperative solutions the EU proposes in overarching multilateral fora.

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